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TAB 1

Bireley, Charles (Video) 10/11/2006 9:15:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 IN AND FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually; 5 As parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. CIVIL ACTION 11 NO. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 15 DEPOSITION OF CHARLES M. BIRELEY, taken 16 pursuant to notice at the Indian River School 17 District, 31 Hosier Street, Selbyville, Delaware, 18 beginning at 9:15 a.m. on October 11, 2006 before 19 David A. Sroka, Registered Professional Reporter and 20 Notary Public. 21 APPEARANCES: 22 THOMAS ALLINGHAM, ESQUIRE 23 RICHARD HORVATH, ESQUIRE 24 BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Mr. Charles 3 Bireley, taken by the Plaintiffs in the 4 matter of Dobrich, et.al, versus Indian 5 River School District, et.al, case 6 number is 15-120. 7 The deposition is being held at 31 8 Hosier Boulevard, Selbyville, Delaware. We 9 are going on the record on October 11, 2006 10 at approximately 9:15 a.m.. The court 11 reporter is Dave Sroka from the firm of 12 Wilcox & Fetzer. I am Lindsay duPhily, 13 videotape specialist from Discovery Video 14 Services. 15 Now, the counsel will introduce 16 themselves and then the court reporter will 17 swear in the witness. 18 MR. ALLINGHAM: Tom Allingham 19 representing the Plaintiffs and with me is 20 Rick Horvath and Brian Lenhard. 21 MR. GOSSELIN: Jason Gosselin 22 representing the Indian River School 23 District, the school board and the other 24 defendants.</p> <p>3</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 CHARLES BIRELEY, 2 The Witness herein, called for examination by 3 the Plaintiffs, having been duly sworn to tell the 4 truth, the whole truth, and nothing but the truth, 5 was examined and testified as follows: 6 examination by him to. 7 EXAMINATION BY MR. ALLINGHAM: 8 Q. Good morning, Mr. Bireley, my name is Tom 9 Allingham, I represent the Plaintiffs. I'm going to 10 ask you questions today that are relevant in our 11 view to the School Board prayer issue in this 12 litigation. 13 We have, as your lawyer has probably told 14 you separated, or the judge has asked us to separate 15 the School Board prior issue from the several other 16 issues in the case, and so the deposition today will 17 be focused on the School Board prayer issue. 18 A couple pieces of introduction. I'm going 19 to refer to the final board policy on School Board 20 prayer, a copy of which I'll give you later and we 21 will talk about it, as the School Board Prayer 22 Policy. Do you understand what I mean when I say 23 that? 24 A. Yes.</p> <p>2 4</p>

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1 A. That's probably true.
 2 Q. I can now eliminate several pages of my
 3 outline. Are there instances in which students are
 4 required to attend Board meetings?
 5 A. Not that I'm aware of.
 6 Q. Are you aware of any instance in which a
 7 student who isn't confronted with a scheduling
 8 conflict has declined an invitation to attend School
 9 Board meetings?
 10 A. Can you repeat the question?
 11 Q. Yes. Setting aside instances in which
 12 student has a scheduling conflict and can't come,
 13 are you aware of any instance in which a student has
 14 declined an invitation to attend School Board
 15 meetings?
 16 A. Not that I'm aware of.
 17 Q. Is it your expectation as a Board member
 18 that students would view an invitation from the
 19 School Board as an attractive invitation for
 20 recognition of their achievements?
 21 MR. GOSSELIN: Objection.
 22 Q. You can answer.
 23 A. My opinion it would be, it's an honor for
 24 them to come to receive an award.

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1 Q. Yes, sir, and in fact isn't that
 2 essentially what Mrs. Hobbs said back in the mid
 3 '90s when she said we ought to be honoring our
 4 students?
 5 A. Yes.
 6 Q. Okay, we identified the ROTC, and we
 7 identified student who come to the Board meetings to
 8 receive awards or recognition, is it also the case
 9 that student government representatives address the
 10 Board regularly?
 11 A. During the time of the school year, yes.
 12 Q. Yes, sir, and in fact there is now a
 13 section, regular section of the agenda called
 14 student government which is intended to provide the
 15 student government representatives with an
 16 opportunity to address the Board, is that correct?
 17 A. Yes.
 18 Q. And that practice was established back in
 19 it 1999s, is that correct?
 20 A. That was one of the things that was done by
 21 a Board member who made the suggestion, it wasn't
 22 done by Mrs. Hobbs.
 23 Q. No, sir, I didn't suggest that it was
 24 separate from the award issue.

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1 A. Yes, it's probably been going on longer
 2 than the awards issue that she recommended that we
 3 do.
 4 Q. Do you have any recollection of when it
 5 began?
 6 A. No, I'm not sure.
 7 Q. I'm going to mark as exhibit, Plaintiff's
 8 Exhibit 32 a document bearing Bates number, I should
 9 have told you, Bates numbers you will see on the
 10 bottom of most of the documents I give you, there is
 11 a little printed number. Some guy named Bates
 12 invented this system. So, we identify them on the
 13 record by Bates numbers so people reading the
 14 transcript know what we are talking about.
 15 So, this is a document titled Minutes of
 16 the Board of Education Special Meeting on July 19,
 17 1994, it's bearing Bates numbers PR206 through 210.
 18 (WHEREUPON, Plaintiff's Exhibit 32
 19 was marked for identification)
 20 MR. ALLINGHAM: I can't remember
 21 if I told you Jason we decided last night
 22 we are going to sequentially number and
 23 call them Plaintiff's Exhibits so that we
 24 don't -- I never know which is the better

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1 way, but that's how we are going to do it.
 2 MR. GOSSELIN: I prefer -- well,
 3 you don't care what I prefer. This is
 4 fine, this is what I prefer.
 5 MR. ALLINGHAM: I feel better
 6 then.
 7 Q. None of this is a memory test, sir. If you
 8 look at page four of the document Plaintiff's
 9 Exhibit 32, under student government which is the
 10 third heading, you will see that Mr. Cohee reports
 11 on a meeting he had at Sussex Central with some
 12 students who talked about a lack of communication
 13 and the inactive student government, and Mr. Cohee
 14 then made a motion, according to the minutes that
 15 you seconded, to include on the agenda a ten minute
 16 segment for student government for both high schools
 17 and the motion passed unanimously.
 18 Does that refresh your recollection that it
 19 was in 1994 that that agenda item was added?
 20 A. I wasn't sure of the date that it was done,
 21 but I know Mr. Cohee is the one who brought it.
 22 Q. And looking at these minutes does that
 23 refresh your recollection that it was 1994?
 24 A. This says July 19, 1994.

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1 Q. So, to the best of your recollection at
2 every Board meeting during your service as a Board
3 member the School Board opened the meeting with a
4 prayer?

5 A. To the best of my knowledge.

6 Q. Who decided, and this is all prior to the
7 more recent adoption of the School Board Prayer
8 Policy, who decided which Board member would lead
9 the group in prayer or offer a prayer?

10 A. The Board president.

11 Q. How was it decided which School Board
12 member would open the meeting with a prayer?

13 A. The Board president just asked someone, I
14 don't know how.

15 Q. Were there any restriction of any kind on
16 what sort of prayer a School Board member could
17 over?

18 A. Not that I'm aware of.

19 Q. Prior to the adoption of Policy BDA.1,
20 which is the School Board Prayer Policy in October
21 of 2004, was there any policy that governed the
22 offering of prayer at School Board meetings?

23 A. Not that I'm aware of.

24 Q. Were you ever asked to lead the Board in

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1 prayer or offer a prayer at the beginning of School
2 Board meetings prior to the adoption of the School
3 Board policy?

4 A. No.

5 Q. So, 1974 to 2004 is the period of time
6 during which you were a School Board member with a
7 three year hiatus, so if my arithmetic is right
8 that's 27 years of service prior to the adoption of
9 Board Policy BDA.1, and you were never asked to
10 offer a prayer at a School Board meeting?

11 A. That's correct.

12 Q. Do you know why?

13 A. No.

14 Q. Did you ever tell any Board president that
15 you were not interested in offering a prayer at the
16 School Board meeting?

17 A. No.

18 Q. Again, if my arithmetic is correct, that's
19 well over 300 School Board meetings at which
20 somebody offered a prayer, but you were not invited
21 to do so, did that strike you as off or unusual?

22 A. No.

23 Q. Did you perceive any pattern in the Board
24 president's practice in the selection of the person

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1 who would be invited to offer the prayer?

2 A. It was usually done by a small portion of
3 the group of ten.

4 Q. And did they have any common
5 characteristics, the small portion?

6 A. Not that I'm aware of.

7 Q. Do you know how that small group, smaller
8 group was identified by the Board?

9 A. To my knowledge the Board president would
10 call on someone at the Board meeting to say the
11 prayer, that's all I know.

12 Q. But you told me that a small group of the
13 Board was asked to offer the prayer, a group that
14 you were not a member of, do you know how that group
15 was identified or picked or selected to be the ones
16 who would offer the prayer?

17 A. No.

18 Q. How small a group, two, three?

19 A. Three, four, somewhere in that
20 neighborhood.

21 Q. Was a Jewish Board member ever included in
22 that group?

23 A. I don't recall us ever having a Jewish
24 Board member.

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1 Q. Was a Muslim Board member ever included in
2 that group?

3 A. I don't call us having a Muslim Board
4 member.

5 Q. Or a Buddhist?

6 A. Same answer.

7 Q. A non-Christian Board member ever included
8 in that group?

9 A. I don't recall us ever having that type of
10 Board member.

11 Q. Would you characterize the members of that
12 smaller group as being particularly religious
13 amongst their peers?

14 MR. GOSSELIN: Objection.

15 A. Do I answer?

16 Q. Yes, sir.

17 A. Can you please ask that question again?

18 Q. Was it -- did you perceive that the
19 criteria for selection of this smaller group was
20 that these were folks who were particularly
21 religious?

22 MR. GOSSELIN: Objection.

23 A. No.

24 Q. Let me just ask the broad question, is it

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1 Q. Do you know precisely when that took place?
 2 A. No.
 3 Q. Did Mr. Helms subsequently report on the
 4 substance of his conversation with Mr. Neuberger to
 5 the Board?
 6 A. He got Mr. Neuberger to come and visit us.
 7 Q. Do you know when that took place?
 8 A. Not exactly.
 9 Q. Was it the summer of 2004?
 10 A. It was after the graduation ceremony, yes.
 11 Q. Was it before the commencement of the next
 12 academic year?
 13 A. Yes, I'm pretty sure it was.
 14 Q. So, sometime during the summer of 2004?
 15 A. Yes.
 16 Q. Do you know whether Mr. Neuberger's visit
 17 to the Board is reflected in the minutes of the
 18 Board meeting?
 19 A. I believe, if I am not mistaken that this
 20 was a special Board meeting, it wasn't a regular
 21 Board meeting.
 22 Q. Okay. Do you know whether the minutes of
 23 that meeting reflect Mr. Neuberger's attendance?
 24 A. I thought it was.

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1 is there any distinction other than that the public
 2 is present at those regularly scheduled public
 3 meetings?
 4 A. Sometimes there is public at special
 5 meetings, too.
 6 Q. Oh, and even if there is public at the
 7 special meetings you don't offer a prayer?
 8 A. That's correct.
 9 Q. Is there any distinction from your point of
 10 view, just as an individual Board member, between a
 11 special meeting at which the public is present and a
 12 regular meeting at which the public is present that
 13 would lead to pray at the latter but not at the
 14 former?
 15 A. Except it's always the way that it's been
 16 done.
 17 Q. How often does the Board, just an estimate
 18 over your 30 years of tenure, how often does the
 19 Board call special Board meetings?
 20 A. Two to three a year maybe.
 21 Q. And how often does the public attend
 22 special Board meetings?
 23 A. I'm not sure.
 24 Q. Not very frequently?

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1 Q. Did had a special Board meeting open with a
 2 prayer?
 3 A. I don't believe it did.
 4 Q. Why is that?
 5 A. I know it's probably sounds strange but the
 6 prayer issue usually is on regular Board meeting.
 7 If we have a special Board meeting we don't do it.
 8 Q. Why would your say that sounds strange?
 9 A. Because we just have a rule, or I guess
 10 it's a past practice or whatever that we always have
 11 the prayer at the regular Board meetings but no
 12 other.
 13 Q. And when you say the regular Board meetings
 14 those are the regular meetings at which the public
 15 is present?
 16 A. Yes, once a month.
 17 Q. And is that regular practice it's not just
 18 today's practice or 2004's regular practice, it's
 19 the regular practice that goes back in time as far
 20 as your tenure on the Board extends, correct?
 21 A. Yes.
 22 Q. And is that because -- is the distinction
 23 between public meetings where prayers are offered
 24 and private meetings where prayers are not offered,

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1 A. I wouldn't say not all three of them. Say
 2 if we do two or three a year, say not all three. It
 3 depends on what the issue is.
 4 Q. In this litigation we have had the
 5 opportunity to look at the minutes of Board
 6 meetings, and I'll represent to you that since the
 7 adoption of Policy BDA.1, the School Board Prayer
 8 Policy on October 19, 2004, since that date there
 9 have been at least 17 special Board meetings over
 10 the course of that two year period.
 11 So, that's eight to nine per year. Has the
 12 incidents of special Board meetings increased in
 13 recent years?
 14 A. The difference between what I'm talking
 15 about and what you're talking about is we have a
 16 special Board meeting the we interview for
 17 personnel, I'm not talking about that. I'm talking
 18 about issues other than hiring of personnel that we
 19 have a special Board meeting for.
 20 Q. Okay, so I can think of it as two
 21 categories of special meetings, one is a category
 22 which is limited to hiring personnel for the
 23 district?
 24 A. Okay.

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<p>1 Q. Then I should be thinking then there is 2 category of special meeting for everything else? 3 A. Yes. 4 Q. Even it's the everything else type meeting 5 that comes two or three times a year? 6 A. Yes, I would say so. 7 Q. I assume that the personnel special 8 meetings there are no public present? 9 A. That is true. 10 Q. At the other kinds of special meetings 11 sometimes the public is present and sometimes there 12 is nobody from the public there? 13 A. Yes. 14 Q. To come back to Mr. Neuberger, there is a 15 special Board meeting on August 23, 2004 that was 16 addressed in large part to the issue of prayer in 17 the schools. I'll show you the minutes, what 18 portion of the minutes that we have in a little 19 while. It that the meeting and to place this in 20 time, the next day, August 24, 2004, was the meeting 21 at which many hundreds of people showed up. Was it 22 the August 23 special meeting, the day before the 23 big meeting, at which Mr. Neuberger showed up at the 24 Board?</p> <p>89</p>	<p>1 issue of School Board prayer? 2 A. I don't think so. 3 Q. Did the Board have a regular Board lawyer? 4 A. Yes. 5 Q. In the year of 2004? 6 A. Yes, excuse me. 7 Q. Who was that? 8 A. Mr. Griffin, James Griffin. 9 Q. Did the Board consult with Mr. Griffin on 10 the issue of School Board prayer? 11 A. Yes. 12 Q. And when did the first, when did the Board 13 first consult with Mr. Griffin on that issue? 14 A. Some time after the graduation. 15 Q. In terms of its consultation with 16 Mr. Griffin did that take place before or after the 17 big meeting on August 24th? 18 A. If memory serves me correctly that was 19 afterwards, after too. 20 Q. Okay. So we've identified Mr. Neuberger, 21 the Alliance Defense Fund and Mr. Griffin, any other 22 lawyers that were consulted by the district on the 23 issue of School Board prayer? 24 A. Maybe David Williams.</p> <p>91</p>
<p>1 A. I don't think so. 2 Q. Was it before or after that August 24th big 3 meeting? 4 A. If memory serves me correctly it was after. 5 Q. So, that's helpful, thanks. Other than 6 Mr. Neuberger did the Board or the district contact 7 any other lawyer or law firm to investigate issues 8 relating to School Board prayer? 9 A. I believe that Mr. Walls, I think it's the 10 Alliance Defense Fund, I think he had some 11 conversation with them, but the Board never met with 12 anyone from them. 13 Q. How did you find out about Mr. Walls' 14 contacts with the Alliance Defense Fund? 15 A. He told us that he had done it, that's when 16 he was president. 17 Q. Did the Board authorize Mr. Walls to 18 contact the Alliance Defense Fund? 19 A. Not that I'm aware of. 20 Q. So, he did that on his own? 21 A. Yes. 22 Q. Other than Mr. Neuberger and the Alliance 23 Defense Fund, did the Board or the district contact 24 any lawyers for the purpose of investigating the</p> <p>90</p>	<p>1 Q. He's with the Morse James firm? 2 A. I'm not sure. 3 Q. It's okay if you don't know? 4 A. It's a Delaware attorney. 5 Q. Got you. Mr. Williams was retained by the 6 Board in connection with its dispute with its 7 insurer, correct? 8 A. Yes. 9 Q. So that took place after February of 2006? 10 A. Yes. 11 Q. Quite a long time after the adoption of the 12 School Board Prayer Policy? 13 A. Yes. 14 Q. Did the Board ever consult with either John 15 Cafferty or John Balliger on the issue of School 16 Board prayer? 17 A. You mean before they came to work for us or 18 work with us? 19 Q. Before or after they came to work with you? 20 A. I don't think so. I think they were 21 presented to us by the insurance company. 22 Q. Did Mr. Balliger and Mr. Cafferty represent 23 the School District and the School Board? 24 A. Yes.</p> <p>92</p>

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1 A. No.
 2 Q. In order to be a practicing Christian do
 3 you consider it necessary to attend church at all?
 4 A. No.
 5 Q. Again on the issue of practice paragraph
 6 three of Board prayer, would you consider that a
 7 student who attends every regular Board meeting and
 8 who hears prayers that regularly mention Jesus
 9 Christ could conclude over time that it is the
 10 Board's view that Christianity is the appropriate
 11 religion?

12 MR. GOSSELIN: Objection.

13 A. I guess that's possible.

14 Q. What I'm trying to get at, Mr. Bireley, is
 15 whether you would consider the cumulative affect of
 16 repeated mention of only one faith or only one
 17 representation of the Deity to have some impact,
 18 cumulative impact over and above the text of a
 19 prayer that's offered?

20 MR. GOSSELIN: Objection.

21 Q. Would you agree with that?

22 A. It's possible.

23 Q. From your perspective as a Board member do
 24 you think it would be preferable to avoid that kind

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1 of cumulative impact, that is to say to offer a
 2 variety of kinds of prayers or moments of silence to
 3 solemnize the occasion?

4 MR. GOSSELIN: Objection.

5 A. I think the policy, or the practice that we
 6 have right now, where the individual person who is
 7 saying the prayer has the right to say, you know,
 8 whatever they want.

9 Q. I'm not asking about individual person's
 10 rights, I'm asking about what as a Board member
 11 would consider preferable? Would you consider it
 12 preferable to in order to solemnize the proceedings
 13 for a variety of kinds of prayers, moments of
 14 silence to be offered?

15 A. I believe in the person's individual right
 16 to say what they want to say when they're in prayer.
 17 I think that's the way it should be.

18 Q. Was the purpose of the adoption of the
 19 School Board Prayer Policy to solemnify the
 20 proceedings of the Board meetings?

21 A. By that you mean to ask for like divine
 22 guidance or help us get through the meeting, to make
 23 the right decisions.

24 Q. I'm really trying to ask a very specific

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1 question. I'll be a little more general about it.
 2 I won't sort of put the answer in the question.
 3 What was the purpose of the adoption of the Board
 4 Prayer at Regular Board Meetings Policy?

5 A. What was the purpose?

6 Q. Yes.

7 A. To ask for divine guidance for the Board to
 8 help us make correct decisions and get us through
 9 the meeting in the proper way.

10 Q. What does the proper way mean?

11 A. To do, to make the best decisions for
 12 what's best for our students.

13 Q. And is the proper way the way that God
 14 would prefer?

15 A. In my opinion, yes.

16 Q. And is the proper way the way that God
 17 personified by Jesus Christ would prefer?

18 A. In my personal opinion, yes.

19 Q. And that was the purpose of the adoption of
 20 the School Board Prayer Policy?

21 A. The purpose of adopting the School Board
 22 policy is to grant us the opportunity to pray for
 23 divine guidance, you know and help us make the right
 24 decisions.

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1 Q. As a Board member when you cast your vote
 2 in favor of Board Policy BDA.1, you cast that vote
 3 in public, correct?

4 A. Yes.

5 Q. And did you expect that members of the
 6 public in attendance would understand that that was
 7 your purpose in adopting the School Board Prayer
 8 Policy?

9 A. I really had no way of knowing what they
 10 thought.

11 Q. If a member of the public had raised their
 12 hand, that's not the right way to say it. If they
 13 signed up to ask a question of the Board during the
 14 public comment session at the October 19th meeting,
 15 and had asked the question what was your purpose in
 16 casting your vote for Board Policy BDA.1, is that s
 17 what you would have responded?

18 A. Not at that time.

19 Q. What would you have responded at that time?

20 A. I wouldn't have responded anything.

21 Q. You would have declined to answer a
 22 question what is your purpose in adopting this
 23 policy?

24 A. Yes.

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1 with a moment of silence?
 2 A. Well --
 3 MR. GOSSELIN: To the extent that
 4 this is not based on information obtained
 5 from counsel.
 6 A. Okay, this would be from individual Board
 7 members?
 8 Q. Yes, sir?
 9 A. It was suggested and was discussed and they
 10 decided not to do it because they still thought that
 11 each individual Board member had the right to say
 12 whatever they wanted to say in their moment of the
 13 time that they give a prayer.
 14 Q. Did somebody say look if we just open the
 15 meeting with a moment of silence it is not going to
 16 be seeking divine guidance for our decisions at the
 17 Board meeting?
 18 A. I don't recall that being said. I don't
 19 recall anybody saying that.
 20 Q. The policy itself contemplates, if you look
 21 at PX9, sir that the Board of Education may choose
 22 to open its meeting with a moment of silence, right?
 23 A. Yes.
 24 Q. And so am I correct that the policy itself

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1 A. I guess that's a fair statement.
 2 Q. Was a reason for the adoption of this
 3 policy to protect individual Board members' First
 4 Amendment rights to express their religion as they
 5 see fit?
 6 MR. GOSSELIN: Objection.
 7 A. I will agree.
 8 Q. Did anybody give any consideration to
 9 calling this policy the policy to protect individual
 10 Board members First Amendment rights?
 11 A. No, not that I recall.
 12 Q. Do you know why the title of the policy was
 13 changed from Policy on Prayer at Board Meetings,
 14 which is what the first Rutherford Institute
 15 document that Mr. Helms passed to you to Board
 16 Prayer at Regular Board Meetings?
 17 A. The only thing I can recall in particular I
 18 remember someone asking the question that was the
 19 only time that we did it, and it was stated at
 20 regular Board meetings because we didn't do it at
 21 any other type of meetings.
 22 Q. Got you. That's not because Board members
 23 didn't think they could equally use divine guidance
 24 at special Board meetings that you never had done

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1 contemplates that moment of silence would be
 2 effective to solemnify the proceedings?
 3 A. In some people's mind, yes.
 4 Q. And the policy itself contemplate that it
 5 would be effective to solemnify the proceedings by
 6 opening with a moment of silence, is that correct?
 7 A. What the policy says?
 8 Q. Yes, sir. Did anyone raise the question if
 9 as the policy reflects being a moment of silence
 10 would be effective to solemnify the proceedings why
 11 it was necessary also to offer the option to
 12 individual Board members to open the meetings with a
 13 prayer?
 14 A. The discussion that I remember what that
 15 it's an individual's choice.
 16 Q. Was the inclusion in the Board Prayer
 17 Policy of the option to open its meeting with a
 18 prayer intended to protect individual Board members'
 19 rights to express their religion as they saw fit?
 20 MR. GOSSELIN: Objection to the
 21 form.
 22 A. To prevent them from doing it?
 23 Q. To protect their rights to express their
 24 religion as they saw fit?

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1 it?
 2 A. I guess that's true.
 3 Q. So, as far as you were able to tell Board
 4 members did think they needed divine guidance for
 5 special Board and regular Board meetings?
 6 A. Yes.
 7 MR. GOSSELIN: And everywhere
 8 else.
 9 Q. In the Board School Board Prayer Policy we
 10 talked a little bit about how you as the president
 11 set up the rotating basis, I have a few more
 12 questions on that.
 13 As things stand now in your service as the
 14 Board president, is it correct that you don't on a
 15 rotating basis offer each Board member the
 16 opportunity to offer a prayer to open the meeting?
 17 A. I just offer it to the people who have
 18 indicated to me that they are willing to do it.
 19 Q. Would it be fair for me to understand that
 20 the selection process is done in advance with the
 21 offer extended only to the, the invitation extended
 22 to Board members who have previously volunteered to
 23 participate in this process?
 24 A. If the other Board members has not

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TAB 2

Bunting, Nina Lou (Video) 10/13/2006 9:07:00 AM

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3
4 MONA DOBRICH and MARCO DOBRICH, individually
5 And as parents and next friend of ALEXANDER
6 DOBRICH, SAMANTHA DOBRICH, JANE DOE and JO
7 DOE, individually and as parents and next friend
8 of JORDAN DOE and JAMIE DOE,
9 Plaintiffs
10 vs. Civil Action
11 Case No. 15-120
12 INDIAN RIVER SCHOOL DISTRICT, ET AL.,
13 Defendants

14 DEPOSITION OF NINA LOU BUNTING, taken
15 pursuant to notice at the Indian River School
16 District, 31 Hosier Street, Selbyville, Delaware,
17 beginning at 9:07 a.m. on October 13, 2006 before
18 David A. Sroka, Registered Professional Reporter and
19 Notary Public.

APPEARANCES:

20 THOMAS ALLINGHAM, ESQ.
21 RICHARD HORVATH
22 BRIAN LENHARD
23 P.O. Box 636
24 Wilmington, Delaware 19899-0636
For the Plaintiffs
JARROD D. SHAW, ESQ.
Drinker Biddle & Reath, LLP
One Logan Square
Philadelphia, Pennsylvania 19103-6996
For the Defendants

1

1 MS. DPHILY: This is the
2 videotape deposition of Ms. Nina Lou
3 Bunting taken by the Plaintiff in the
4 matter of Dobrich, et al. versus Indian
5 River School District, et al., case number
6 15-120. We are going on the record at 31
7 Hosier Boulevard, Selbyville, Delaware
8 on October 12, 2006 at approximately 12:55
9 p.m..

10 The court reporter is Dave Sroka
11 from the firm of Wilcox & Fetzer,
12 Wilmington, Delaware. My name is
13 Lindsay duPhily and I'm the videotape
14 specialist of Discovery Video Services.
15 Counsel will now introduce
16 themselves and then the court reporter
17 will swear in the witness.

18 MR. ALLINGHAM: I'm Tom Allingham
19 I represent the Plaintiffs in this
20 case, and with me are Richard Horvath and
21 Brian Lenhard.

22 MR. SHAW: I'm Jarrod Shaw and I
23 represent the defendants in this action.

24 NINA LOU BUNTING,

2

1 The Witness herein, called for examination by
2 the Plaintiffs, having been duly sworn to tell the
3 truth, the whole truth, and nothing but the truth,
4 was examined and testified as follows:

5 EXAMINATION BY MR. ALLINGHAM:

6 Q. Did you attend the August 24, 2004 Board
7 meeting?

8 A. August 24, 2004 Board meeting, are you
9 referring to the one where the public, a lot of
10 people from the public came?

11 Q. Hundreds of people?

12 A. Okay, yes, I did.

13 Q. Did anything occur at that meeting that was
14 disturbing to you personally?

15 A. No.

16 Q. I want to show you a clip of the vide from
17 that meeting?

18 A. Okay.

19 Q. This is a portion from the public comment
20 section of the meeting.

21 A. Okay.

22 (AT THIS POINT IN TIME A TAPE WAS PLAYED)

23 Q. Were you distracted when your telephone
24 rang during that clip? Would you like me to play it

3

1 again for you?

2 A. No, I don't think I was distracted. I may
3 have been momentarily.

4 Q. Were you present when -- who was speaking
5 during that public comment section?

6 A. Mr. Harold Short.

7 Q. Harold Johnson?

8 A. Harold Johnson, okay. I don't know him
9 that well. I knew it was Harold somebody.

10 Q. Were you present when he made that
11 statement?

12 A. Yes, I was.

13 Q. Did you hear him say that the good Lord has
14 proven that there's a higher power above our Supreme
15 Court?

16 A. I guess I heard him say it. I didn't hang
17 on every word.

18 Q. Did you hear him say that was proven when
19 the last I heard Madelyn Murray-O'Hare disappeared
20 never to be seen again?

21 A. Well, I heard it just now, do I remember --

22 Q. that's the first time that you heard it?

23 A. I'm sure I heard it that night, but I

24 didn't remember hearing it until you showed me

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Bunting, Nina Lou (Video) 10/13/2006 9:07:00 AM

1 Mr. Griffin to draft a School Board Prayer Policy?
 2 MR. SHAW: I'm going to
 3 object to attorney/client privilege. If
 4 the Board asked Mr. Griffin that's covered
 5 by the privilege.
 6 Q. Do you remember whether the Board asked
 7 Mr. Griffin what the weather was like?
 8 A. No, I don't remember what was asked of
 9 Mr. Griffin that evening.
 10 Q. The Board Prayer Policy, the process of
 11 generating Board policies, I'm going to ask, this is
 12 the general process, is it typical that the Board
 13 would decide to refer a matter to the policy
 14 committee. The policy committee would consult with
 15 the Board's attorney, and then the policy committee
 16 and the Board's attorney typically would draft a
 17 policy for presentation to the full Board?
 18 A. Never having attended a policy meeting I
 19 can't say what their process is.
 20 Q. Fair enough. Do you know whether or not
 21 Mr. Griffin ever drafted a draft School Board Prayer
 22 Policy?
 23 A. I have no idea.
 24 Q. The policy that you adopted is a policy

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1 that is described on its face as, sorry, ma'am, it's
 2 titled Board Prayer at Regular Board Meetings. It's
 3 quite specific that it's a policy having to do with
 4 regular Board meetings. Did anyone give any
 5 consideration at the Board level to having a policy
 6 that extended to special Board meetings?
 7 A. Not to my knowledge because I don't think
 8 we had ever had prayer at special Board meetings, so
 9 that wasn't even a consideration at this time.
 10 Q. Did you understand the -- there was no
 11 litigation at the time of the adoption,
 12 consideration and adoption of this policy, the
 13 litigation was not filed until 2005?
 14 A. Okay.
 15 Q. So, did you understand that the question
 16 that had been raised about prayer at Board meetings
 17 was limited to regular Board meetings or did you
 18 understand that it extended to all Board meetings?
 19 A. I understood that it was about regular
 20 Board meetings.
 21 Q. And from where did you get that
 22 understanding?
 23 A. I got the understanding, I don't think I
 24 was present, there was the graduation at which Mona

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1 Dobrich first talked about her complaint. I don't
 2 recall having been to the first Board meeting after
 3 that, and when I found out what was going on it was
 4 my understanding that Mona Dobrich came to the June
 5 Board meeting to complain about prayer at
 6 graduation, and then found out that there was prayer
 7 at the regular Board meeting.
 8 So, it was my understanding that we would
 9 draft policy to try to take care of the situation,
 10 and I think most things that we tried to do were in
 11 hopes of not being sued.
 12 Q. This is sort of, maybe an unusual question,
 13 but do you feel as a Board member that your rights
 14 regarding the free exercise of your religion are
 15 infringed by not having a policy on special meeting
 16 Board prayer?
 17 A. No, I don't think my rights are violated by
 18 not having a policy, is that what you mean?
 19 Q. Yes, exactly. The other sentence of the
 20 limited portion of the executive session minutes,
 21 which is Plaintiff's Exhibit 13 that I have reports
 22 that, "Several Board members expressed that their
 23 constituents do not want the Board to change its
 24 practice of opening the meetings with a prayer." Do

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1 you remember which Board members expressed that
 2 view?
 3 A. I know I was one of them.
 4 Q. Do you remember the others?
 5 A. And I'm not saying that I expressed that
 6 view that evening. I know that over this entire
 7 thing I have been bombarded with constituents, and I
 8 have expressed that numerous times --
 9 Q. Okay.
 10 A. -- not necessarily just at this one time.
 11 Q. And when say that you've been bombarded
 12 with communications from constituents, give me a
 13 ballpark number 50, 100, 1000?
 14 A. In the hundreds. I'm not saying phone
 15 calls and emails and letters. I know everyone in
 16 this -- well, I know a lot of the people in this
 17 community, and we go to restaurants in this
 18 community, we go grocery shopping, we're at ball
 19 games with our grandchildren and people come up to
 20 me all the time. I know for a fact that five people
 21 this week have come up to me, one lady that I had
 22 called on the phone about something, so these people
 23 have expressed this to us.
 24 Q. What are they expressing?

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1 A. They want us to stand firm, they want us to
2 take a stand for what we feel is right and they are
3 behind us and they support us.
4 Q. Does anybody articulate what it is that you
5 are suppose to be standing firm for?
6 A. We are standing firm for being able to have
7 the right to say a prayer at the regular Board
8 meeting aloud.
9 Q. And it's a fine distinction, but your
10 answer is couched in terms of what you are standing
11 firm for, and what I was trying to ask was, did
12 anybody who's called you or bumped into you on the
13 street or whatever, have they articulated to you
14 what they think you're suppose to be standing up
15 for?
16 A. Yes.
17 Q. And have some of them articulated that they
18 want you to stand firm for School Board prayer?
19 A. Yes.
20 Q. Are have some of them articulated to you
21 that they want you to stand firm for prayer in the
22 schools?
23 A. No, sir because they understand that that's
24 already been -- there's already been a decision

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1 about that.
2 Q. It appeared that a number of the
3 constituents at the August 24th meeting didn't
4 understand that?
5 A. True, but it's been two years now and
6 people by reading the paper and all I think most
7 people now are aware of what the situation truly is.
8 Q. Okay. Have you received any comments that
9 a constituent of yours thought that the policy
10 should be revised?
11 A. No, sir.
12 Q. So, the comments that you've received from
13 your constituents have been unanimous?
14 A. Yes, sir.
15 Q. And that's important to you, isn't it?
16 A. Well, it's important to me because I
17 represent these people and they elected me to make
18 decisions at the Board level on their behalf, and I
19 represent my people.
20 Q. Do you know how many residents there are in
21 your district? Which is your district,
22 Mrs. Bunting?
23 A. I'm district three. I have part of
24 Dagsboro, all of Millsboro, down toward the Long

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1 Neck area. I feel like I have a foot, I don't know
2 if you are familiar with our district, but we are
3 sort of north and south, I have a foot in the north
4 and also in the south.
5 Q. That's the second time you've sort of
6 talked about the north and the south of the
7 district, is there, or has been in the past a divide
8 between the north and the south?
9 A. Very much so.
10 Q. Tell me what mean by that?
11 A. We were put together as a district in 1969
12 by the courts, and there are some people who are
13 still upset that it was such a large district put
14 together, and we have to have two high schools
15 because it's such a large district, and our high
16 schools play sports against each other, which isn't
17 real good, so we are our own arch enemies.
18 So, therefore as a Board when we have to
19 decide about which time gets new uniforms, which
20 team gets turf on their football, see what I mean?
21 So, being on this School Board I was warned could be
22 tough because of a north south split sometimes on
23 decisions.
24 Q. And I guess particularly tough for you

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1 because your district is sort of part north and part
2 south?
3 A. Yes, but I taught in this district and I
4 don't see a north and south, I see one district.
5 Q. In terms of the members, the current
6 members of the Board, which are from the northern
7 half and which are from the southern half?
8 A. The present members?
9 Q. Yes, ma'am.
10 A. Okay, I'll start with the southern half.
11 That would be Charlie Bireley, Reggie Helms, Donna
12 Mitchell, Donald Hattier.
13 Q. And the rest are from the north?
14 A. There are the two of us straddle, and that
15 would be Randy Hughes and myself. We are the
16 straddlers. And then the rest are from the
17 northern.
18 Q. In the course of those hundred or hundreds
19 of comments from your constituents has anyone said
20 to you that you should stand firm for Christian
21 values?
22 A. No.
23 Q. Not one?
24 A. No. Not Christian values. That's never

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1 been the terminology used. I will say it's fight
 2 the ACLU. And it's been we've always had prayer,
 3 why can't we have prayer, we should have prayer,
 4 it's our right to have prayer, but stand firm for
 5 Christian values I don't think that terminology has
 6 ever been used, not with me.
 7 Q. You mentioned that your constituents
 8 generally speaking have told you that you should
 9 stand firm for prayer at regular Board meetings?
 10 A. Uh-hum.
 11 Q. And do they draw that distinction between
 12 regular Board meetings and special Board meetings?
 13 A. No.
 14 Q. So, they said stand firm for Board prayer?
 15 A. For Board meetings, for praying at the
 16 Board meetings.
 17 Q. And what do you say to your constituents
 18 when they say that?
 19 A. When I say that I say that we are -- what
 20 can we do, we are listening to our lawyers, we are
 21 doing what we need to do, and if the case goes to
 22 court, you know, the judge will decide. See we
 23 have, we can't talk about this as you well know, so
 24 we have to be extremely careful what we say.

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1 A. (Nods head).
 2 Q. No one has told you that you should stand
 3 firm for Christian values?
 4 A. I'm not going to say the words Christian
 5 values have never been mentioned, but to my
 6 knowledge no one has called it Christian values.
 7 They know that the situation is prayer at Board
 8 meetings and they usually are the words they use.
 9 Prayer, Board meetings.
 10 Q. Well, the litigation is, of course about
 11 more than just prayer at Board meetings, correct?
 12 A. Well, they don't know that.
 13 Q. Have you ever received hundreds of comments
 14 about any other issue that has faced the Board from
 15 your constituents?
 16 A. No, sir.
 17 Q. Have you ever received even a fraction of
 18 that many comments on any other issue?
 19 A. Not even a fraction. The closest I ever
 20 came to was when we were going to, our calendar
 21 situation, a calendar situation, where we wanted to
 22 shorten the Easter break and make it just Friday and
 23 Monday because we didn't have air conditioning in
 24 all the schools yet and, you know, and the parents

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1 Q. I apologize, but I don't know what do you
 2 mean when you say you can't talk about this?
 3 A. We've been told to be very careful what we
 4 say in public, okay?
 5 Q. By your lawyer?
 6 A. By our lawyers.
 7 Q. Nevertheless, from time to time members of
 8 the Board have given statements or interviews to the
 9 press, is that correct?
 10 A. True.
 11 Q. And members of the Board have gone on the
 12 local radio station?
 13 A. Yes, sir.
 14 Q. In your view are those actions consistent
 15 with the admonition from your lawyers that you
 16 should be very, very careful about what you say?
 17 A. They were happening before we got, before
 18 we were told to be extremely careful. We didn't
 19 have good representation in the beginning.
 20 Q. And that situation's been corrected now?
 21 A. Yes, sir.
 22 Q. So, in the comments from your constituents
 23 that have been unanimous that you should stand firm
 24 for School Board prayer?

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1 got really upset because they felt the children
 2 needed a break after the state test. And I did get
 3 many phone calls about that, but nothing, nothing
 4 compared to this.
 5 Q. Would it be fair to say that this is the
 6 issue in which your constituents have been most
 7 intensely interested over the entire tenure, over
 8 your entire tenure on the Board?
 9 A. Well, certainly the last several years of
 10 my tenure. Not so at the very beginning between '02
 11 and '04.
 12 Q. Yes, the interest has been very intense
 13 since '04?
 14 A. Since '04.
 15 Q. And the intensity of that interest is the
 16 greatest of any issue that's ever been presented to
 17 the Board --
 18 A. Yes.
 19 Q. -- during your tenure?
 20 A. Yes, in my knowledge, as far as I'm
 21 concerned.
 22 Q. Do you know who the Does are?
 23 A. No, sir.
 24 Q. Has anybody ever told you they think they

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TAB 3

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF DELAWARE</p> <p>3 MONA DOBRICH and MARCO : C.A. No. 15-120 (J</p> <p>4 DOBRICH, Individually and :</p> <p>5 as parents and next friend :</p> <p>6 of ALEXANDER DOBRICH, :</p> <p>7 SAMANTHA DOBRICH, JANE DOE :</p> <p>8 and JOHN DOE, Individually :</p> <p>9 and as parents and next :</p> <p>10 friend of JORDAN DOE and :</p> <p>11 JAMIE DOE, :</p> <p>12 Plaintiffs, :</p> <p>13 v. :</p> <p>14 INDIAN RIVER SCHOOL :</p> <p>15 DISTRICT, et al., :</p> <p>16 Defendants. :</p> <p>17 Videotaped Deposition of RICHARD COHEE,</p> <p>18 taken pursuant to notice, on Tuesday, October 17, 2006</p> <p>19 at 1:17 p.m. at 31 Hosier Street, Selbyville, Delaware,</p> <p>20 reported by Lorena J. Hartnett, a Registered</p> <p>21 Professional Reporter and Notary Public.</p> <p>22 APPEARANCES:</p> <p>23 BRIAN G. LENHARD, ESQUIRE</p> <p>24 RICHARD HORVATH, ESQUIRE</p> <p>One Rodney Square</p> <p>Wilmington, DE 19801</p> <p>Attorney for the Plaintiff</p> <p>WILCOX & FETZER</p> <p>1330 King Street - Wilmington, DE 19801</p> <p>302-655-0477</p> <p>www.wilfet.com</p> <p>1</p>	<p>1</p> <p>2</p> <p>3 TABLE OF CONTENTS</p> <p>4 TESTIMONY OF RICHARD COHEE:</p> <p>5 Direct Examination by Mr. Lenhard 4</p> <p>6 Certificate of Reporter116</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>3</p>
<p>1</p> <p>2 APPEARANCES (CONTINUED):</p> <p>3 JASON P. GOSSELIN, ESQUIRE</p> <p>4 Drinker, Biddle & Reath, LLP</p> <p>5 One Logan Square</p> <p>6 18th and Cherry Streets</p> <p>7 Philadelphia, PA 19103-6996</p> <p>8 Attorney for the Defendants</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>2</p>	<p>1 VIDEOGRAPHER: This is the videotaped</p> <p>2 deposition of Mr. Richard Cohee taken by the</p> <p>3 plaintiff in the matter of Dobrich et al</p> <p>4 versus Indian River School District, et al,</p> <p>5 Case Number 15-120. This deposition is</p> <p>6 being held at 31 Hosier Boulevard. We are</p> <p>7 going on the record on October 17, 2006 at</p> <p>8 approximately 1:17 p.m.</p> <p>9 The court reporter is Lorena Hartnett</p> <p>10 from the firm of Wilcox and Fetzer,</p> <p>11 Wilmington, Delaware. My name is Lindsay</p> <p>12 DuPhily. I am the videotape specialist with</p> <p>13 Discovery Video Services.</p> <p>14 Counsel will now introduce themselves</p> <p>15 and the court reporter will swear in the</p> <p>16 witness.</p> <p>17 MR. LENHARD: My name is Brian</p> <p>18 Lenhard, and I represent the plaintiffs in</p> <p>19 this action.</p> <p>20 MR. GOSSELIN: Jason Gosselin for</p> <p>21 defendants.</p> <p>22 RICHARD COHEE,</p> <p>23 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS</p> <p>24 DIRECT EXAMINATION ON BEHALF OF THE PLAIN</p> <p>4</p>

Cohee, Richard (Video) 10/17/2006 1:17:00 PM

1 A. That's okay. I take them on and off a
2 hundred times a day.
3 Q. Okay, if you turn to page four, which is
4 BPD702, you will see where the numbered paragraphs
5 start.
6 A. Okay, page four?
7 Q. About halfway down there is, it starts, the
8 paragraph starts, "In order to solemnify." Do you see
9 that?
10 A. Okay, number one?
11 Q. Number one.
12 A. Uh-huh.
13 Q. If you look at that and look at PX9 at the
14 same time, do you see that those paragraphs are
15 substantially the same?
16 A. Yes.
17 Q. Do you want to take the time to read it, or
18 have you read it before?
19 A. I recall this.
20 Q. Okay.
21 A. And I know that there is a lot of
22 similarities, as I skim through here, with those five
23 sections.
24 Q. Did anyone from the public ever ask you for a

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1 copy of this policy, PX9?
2 A. I don't know. I don't recall it.
3 Q. Did anyone submit -- Can you -- Strike that.
4 A. If I were to be asked, I would most likely
5 refer them to Central Office.
6 Q. Okay. All right, now I would like to give
7 you two documents which again you probably have over
8 there, PX13 and PX14. Do you recall why the board met
9 on August 23, 2004?
10 A. Well, it says here to discuss potential
11 pending litigation. The number there would identify
12 the issue, and I don't recall what number that was
13 used to identify the issue.
14 Q. You don't recall whether it meant --
15 A. 0501PL, I don't know if that's the number
16 that refers to the issue that we are here for today or
17 not.
18 Q. Do you recall whether it had to do with
19 school board prayer in general?
20 A. I would -- Well, I know we had a number of
21 meetings about that, these issues, and I know some I
22 attended and some I did not. I would -- Well, I don't
23 want to guess, but my thoughts are this meeting could
24 have very well been in reference to these issues, but

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1 I can't sit here and say that with certainty.
2 Q. Can you turn to the second page of PX 14? On
3 the second page of that you will see there is a roll
4 call.
5 A. Okay.
6 Q. And you are listed there as present?
7 A. Yes.
8 Q. And the next section lists other visitors and
9 staff in attendance?
10 A. Yes.
11 Q. Can you tell me why those people were there
12 to discuss litigation?
13 A. No. Specifically, no. I will say that it
14 has been an occurrence that the superintendent and/or
15 the assistant superintendent has been present during,
16 over the years during discussion of potential
17 litigation or pending litigation, along with Janet
18 Hearn, who was our recording secretary.
19 Patrick Miller was finance. I am not sure
20 what role he would have played in that discussion.
21 And Jim Griffin at the time was an attorney.
22 Q. Okay, so in your discussion you mentioned the
23 superintendent and the assistant superintendent.
24 That's Ms. Hobbs is the superintendent?

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1 A. She was at that time.
2 Q. And Mr. Savage is assistant superintendent?
3 A. And he still is, yes. I think he was at that
4 time, but he is now. Can I clarify something, though?
5 Q. Sure.
6 A. That is the beginning of the meeting. Okay?
7 And then that's the roll call and the recording of who
8 is present, and then we go into executive session.
9 So whether or not those people all stayed, I
10 don't know. They could have been asked to leave, as
11 we have done on other occasions.
12 For example, it strikes me as a little odd
13 that the finance person was there. I would almost
14 venture to say that on this particular issue he was
15 asked or knew to step out, but I don't know that with
16 certainty.
17 Q. Well, let me ask you a question. Does the
18 board invite people to special meetings?
19 A. Depending on the issue, the board requires or
20 asks for certain information and it comes from various
21 sources.
22 Q. Well, if you look through the minutes, --
23 A. Okay.
24 Q. -- which is simply that one page, do you see

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1 reaction to Dr. Hattier's prayer or the announcement
2 that Dr. Hattier would give a prayer on August 24,
3 2004?

4 A. Um, I don't remember the reaction, but I
5 think there was a lot of concern as to whether we
6 would or not, and if there was any reaction at all, it
7 most likely would have -- I shouldn't say that most
8 likely, because I don't know. It would probably have
9 been supportive.

10 Q. When you said that the prayer was for the
11 board members, is that because of the disclaimer?

12 A. No, because it was for the board members long
13 before we had the disclaimer or that policy.

14 Q. Okay, have you ever seen someone get up and
15 leave the meeting or attempt to leave the meeting when
16 there is an announcement that a prayer is going to be
17 given?

18 A. Um, well, I will say that different times
19 during the meeting people come and go for a lot of
20 reasons. Okay? I can't sit here and say that I have
21 seen anyone go for in response to the prayer preface,
22 and I can't say that I have ever really watched to see
23 if that occurred.

24 Q. Are students in the audience when the prayer

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1 VIDEOGRAPHER: This deposition is
2 ending at approximately 4:12 p.m.
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1 is given?

2 A. Most often.

3 Q. Have all the prayers been Christian?

4 A. I think you asked that earlier, and, to my
5 knowledge, I would have to say the majority have been.

6 Q. Do you recall any prayer in the name of
7 Jehovah?

8 A. No, I can't.

9 Q. Any prayer in the name of Buddha?

10 A. No.

11 Q. Any prayer in the name of Allah?

12 A. No.

13 Q. So can you recall any prayer for any other
14 religious deity besides Jesus or the Christian God?

15 A. Other than the moment of silence, which would
16 not address either faith.

17 Q. Has anyone served on the school board who is
18 not Christian?

19 A. I do not know that is true. I don't make it
20 a point of asking people their religion or beliefs,
21 and it wouldn't have made any difference to me.

22 MR. LENHARD: I think that's all the
23 questions I have. Thank you very much.

24 THE WITNESS: Thank you.

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1 CERTIFICATE

2 I, Lorena J. Hartnett, a Notary Public and
3 Registered Professional Reporter, do hereby certify
4 that the witness, RICHARD COHEE, was by me first
5 duly sworn to testify the truth, the whole truth, and
6 nothing but the truth; that the foregoing deposition
7 was taken at the time and place stated herein; and
8 that the said deposition was recorded stenographically
9 by me and then reduced to typewriting under my
10 direction, and constitutes a true record of the
11 testimony given by said witness.

12 I further certify that the inspection,
13 reading and signing of said deposition was not waived
14 by counsel for the parties and by the witness.

15 I further certify that I am not a relative,
16 employee, or attorney of any of the parties or a
17 relative or employee of either counsel, and that I am
18 in no way interested directly or indirectly in this
19 action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office on this 24th day of
22 October 2006.

23
24 Cert. #134-RPR, Exp. 01-31-2008

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TAB 4

Dobrich, Marco 11/1/2006 12:55:00 PM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH, et al., : CIVIL ACTION 4 Plaintiffs, : 5 -v- : 6 INDIAN RIVER SCHOOL : DISTRICT, et al., : NO. 05-120-JJF 7 Defendants. : 8 Deposition of MARCO DOBRICH, taken before 9 Elaine Gallagher Parrish, Registered Professional Reporter, at 1100 North Market Street, Suite 1000, 10 Wilmington, Delaware on November 10, 2006, commen approximately at 12:55 p.m. 11 APPEARANCES: 12 THOMAS J. ALLINGHAM, II, ESQ. 13 BRIAN G. LENHARD, ESQ. One Rodney Square 14 P.O. Box 636 Wilmington, Delaware 19899-0636 for the Plaintiffs 15 JARROD D. SHAW, ESQ. 16 Drinker Biddle & Reath, LLP One Logan Square 17 18th and Cherry Streets Philadelphia, Pennsylvania 19103-6996 for the Defendant. 18 ALSO PRESENT: 19 Timothy Kearns 20 Kristhy Peguero 21 Mona Dobrich, Plaintiff 22 23 WILCOX & FETZER 1330 King Street - Wilmington, Delaware 19801 24 (302)655-0477 www.wilfet.com</p> <p style="text-align: center;">1</p>	<p>1 Q. What did you do to prepare for today's 2 deposition? 3 A. Met with the lawyers a couple weeks ago. 4 Q. I believe you said your answer was you met with 5 your attorneys to prepare for the litigation or for the 6 deposition? 7 A. Yes. 8 Q. Did you discuss the deposition with anyone else? 9 A. No. 10 Q. Okay. Did your attorney show you any documents 11 at that point? 12 A. No. 13 Q. Mr. Dobrich, where do you currently live? 14 A. Georgetown, Delaware, 154 David Street. 15 Q. That's my next question. 16 A. Pine Grove Manor. 17 Q. Do you live in a house there? 18 A. Yes. 19 Q. Do you rent the house? 20 A. No, I live with my wife's sister. 21 Q. Okay. Just for the record, where did you live 22 before that? 23 A. 174 Georgetown -- Route 1, 174, Georgetown, 24 Delaware.</p> <p style="text-align: center;">3</p>
<p>1 MARCO DOBRICH, 2 having been first duly sworn according to law, was 3 examined and testified as follows: 4 --- 5 BY MR. SHAW: 6 Q. Mr. Dobrich, I know you heard this earlier, but 7 I'll give it again pretty quickly. My name is Jarrod 8 Shaw and I represent the Defendants in this litigation. 9 I am going to ask you a bunch of questions to which 10 you'll respond. If you don't understand the question, 11 please ask me to either repeat it or rephrase it. 12 Because if you give your answer it will look on the 13 transcript as though you understood the question and 14 your answer was to that question. So I just want to 15 make sure that you're clear. 16 A. Yes. 17 Q. So please feel free to ask me to rephrase or to 18 repeat my question. 19 Again, if you need to take a break at any 20 point, just let me know and we'll stop and you can take 21 a break. 22 A. Okay. 23 Q. Have you ever been deposed before? 24 A. No.</p> <p style="text-align: center;">2</p>	<p>1 Q. And how long did you live there for? 2 A. 19 years. 3 Q. Did you grow up in Georgetown? 4 A. No. 5 Q. Where did you grow up? 6 A. Seaford, Delaware. 7 Q. Seaford, Delaware? 8 A. 19947 -- or 73. 9 Q. What county is that in? 10 A. Sussex. 11 Q. It's in Sussex County. Is it the Indian River 12 School District? 13 A. No. 14 Q. No. Okay. Is your high school a rival with 15 their high school? 16 A. No, we were with Laurel. 17 Q. Oh, okay. So you did not live in the Indian 18 River School District until you moved into the home at 19 174 Georgetown? 20 A. Yes. 21 Q. Are Samantha and Alex your only children? 22 A. Yes. 23 Q. So is this your first marriage? 24 A. Yes.</p> <p style="text-align: center;">4</p>

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1 A. Before this? '04 or altogether?
 2 Q. I'll rephrase. Right now I'm speaking before
 3 June 15th, 2004, do you know approximately how many
 4 School Board meetings you attended?
 5 A. Six or seven.
 6 Q. Six or seven. Was Mrs. Dobrich with you at all
 7 those meetings?
 8 A. Not at all of -- not at all of them.
 9 Q. Okay. Were Alex and Samantha or Samantha with
 10 you at any of those meetings?
 11 A. Maybe one or two.
 12 Q. Let me break it down. Was Alex at one or two?
 13 A. Yes.
 14 Q. And then Samantha was maybe at one or two?
 15 A. Yes.
 16 Q. Okay. Did the School Board offer a prayer at
 17 any of those meetings?
 18 A. Yes.
 19 Q. Okay. Do you remember what that prayer was?
 20 A. What they said?
 21 Q. Yeah. If you could remember, was it in Jesus's
 22 name?
 23 A. Most of them were. Probably all of them.
 24 Q. Is it your recollection that all of them were or

9

1 most of them were?
 2 A. I would say all.
 3 Q. Did they ask you -- did the School Board ask you
 4 -- or let me rephrase.
 5 Did the School Board ask the audience
 6 members to bow their head before the prayer was given
 7 A. Yes.
 8 Q. At all of the meetings?
 9 A. Yes.
 10 Q. Did you bow your head?
 11 A. Yes.
 12 Q. Do you know if -- you testified that Alex was
 13 with you at one or two of these meetings?
 14 A. Yes.
 15 Q. Did Alex also bow his head?
 16 A. He kept his head straight ahead.
 17 Q. We can't take the hand motions down on the
 18 record.
 19 A. Straight. I mean maybe at one he did straight
 20 but he probably put his head down at one -- the other
 21 one.
 22 Q. Okay. Did Samantha bow her head, do you know
 23 A. Yes.
 24 Q. Okay. Did you ask Alex why he kept his head

10

1 straight at that meeting?
 2 A. No.
 3 Q. Why did you bow your head at the meeting?
 4 A. Feel like I was obligated because they said to,
 5 and everybody around was doing it.
 6 Q. Okay. Mr. Dobrich, would you have a problem
 7 with nondenominational prayer at the school or prayer
 8 meetings?
 9 MR. ALLINGHAM: Object to the form of the
 10 question. You may answer it.
 11 THE WITNESS: As long as they don't say
 12 within, you know, Jesus's name.
 13 BY MR. SHAW:
 14 Q. Would you be okay if they said in God's name?
 15 MR. ALLINGHAM: Object to the form of the
 16 question.
 17 BY MR. SHAW:
 18 Q. Let me rephrase. Would you be okay if the
 19 School Board members said in God's name?
 20 MR. ALLINGHAM: Object to the form of the
 21 question.
 22 THE WITNESS: Yes, I would.
 23 BY MR. SHAW:
 24 Q. Okay. Why is it okay if the Board members said

11

1 it in God's name but not okay if they say in Jesus's
 2 name?
 3 MR. ALLINGHAM: Object to the form of the
 4 question.
 5 BY MR. SHAW:
 6 Q. In your mind?
 7 A. In my mind I think they should do it before
 8 anybody is in there. They should do it, you know, in
 9 the back room before they come in there to start the
 10 Board meeting.
 11 Q. Okay. Is it okay if they say in God's name at
 12 the meeting?
 13 MR. ALLINGHAM: Object to the form.
 14 MR. SHAW: In your mind.
 15 MR. ALLINGHAM: I object to the form of the
 16 question.
 17 THE WITNESS: I don't think they should say
 18 anything really.
 19 BY MR. SHAW:
 20 Q. Mr. Dobrich, I am going to show you what's been
 21 previously marked as plaintiff's Exhibit 9. I think you
 22 have it in front of you. I'll represent to you that
 23 this is the Board prayer at regular Board meetings.
 24 It's designated by BDA-1. Have you ever seen this

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TAB 5

Dobrich, Mona 11/10/2006 11:05:00 AM

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3 MONA DOBRICH, et al., : CIVIL ACTION
4 Plaintiffs, :

5 -v- :

6 INDIAN RIVER SCHOOL :
7 DISTRICT, et al., : NO. 05-120-JJF
8 Defendants. :

9 Deposition of MONA DOBRICH, taken before
10 Elaine Gallagher Parrish, Registered Professional
11 Reporter, at 1100 North Market Street, Suite 1000,
12 Wilmington, Delaware on November 10, 2006, commen
13 approximately at 11:05 a.m.

14 APPEARANCES:

15 THOMAS J. ALLINGHAM, II, ESQ.
16 BRIAN G. LENHARD, ESQ.
17 One Rodney Square
18 P.O. Box 636
19 Wilmington, Delaware 19899-0636
20 for the Plaintiffs,
21 JARROD D. SHAW, ESQ.
22 Drinker Biddle & Reath, LLP
23 One Logan Square
24 18th and Cherry Streets
Philadelphia, Pennsylvania 19103-6996
for the Defendant.

25 ALSO PRESENT:

26 Timothy Kearns
27 Kristhy Peguero
28 Marco Dobrich, Plaintiff
29 WILCOX & FETZER
30 1330 King Street - Wilmington, Delaware 19801
31 (302)655-0477
32 www.wilfet.com

1

1 deposition?

2 A. I met with my lawyer last week.

3 Q. Okay. Do you remember when last week?

4 A. I don't even know if it was last week.

5 Q. Okay.

6 A. It might be last week. I'm not sure.

7 Q. One other thing before we get going, if you
8 could wait until I finish and I'll do the same for you.

9 The Court Reporter can't take down both at the same
10 time, so it will just get a bit confusing.

11 Okay. When you met with your attorneys
12 were you shown any documents?

13 A. No.

14 Q. No? Okay. And have you spoken with anyone else
15 regarding your deposition today?

16 A. No.

17 Q. All right. Mrs. Dobrich, where do you currently
18 live?

19 A. 1428 Emory Road, Wilmington, Delaware, 19803.

20 Q. And how long have you lived there?

21 A. One year and three months.

22 Q. Do you live in a house?

23 A. We rent a house.

24 Q. You rent a house? Okay. And where did you live

3

1 MONA DOBRICH,
2 having been first duly affirmed according to law, was
3 examined and testified as follows:

4 ---

5 BY MR. SHAW:

6 Q. Hi, Mrs. Dobrich. Thank you for coming today.
7 My name is Jarrod Shaw and I represent the Defendant
8 this action. We're going to go through a process today
9 of asking you some questions or I'll go through the
10 process of asking you questions and you'll answer them
11 I ask if you can't hear me or you need me to repeat a
12 question, or you don't understand what I'm asking that
13 you ask me to repeat it or rephrase it. If you answer
14 the question as I ask it, it's going to look on the
15 transcript as though you understood what I was asking.

16 A. Okay.

17 Q. So it's important that you take a moment and
18 think about the question before you answer it. And if
19 you don't understand it, I'll be happy to rephrase for
20 you.

21 A. Okay.

22 Q. Have you ever been deposed before?

23 A. No.

24 Q. Okay. What did you do to prepare for today's

2

1 before the Wilmington address?

2 A. We rented an apartment in Wilmington at Top of
3 the Hill.

4 Q. Is that the name of the apartment complex?

5 A. Yes.

6 Q. Okay. And how long did you rent that apartment
7 for?

8 A. One year.

9 Q. And you said we, who do you mean by we?

10 A. Myself and my son, Alex.

11 Q. Okay. I assume by that Alex goes by Alex?

12 A. Correct.

13 Q. Okay. And before you moved to the apartments a
14 Top of the Hill, where did you live?

15 A. In Georgetown, Delaware.

16 Q. Did you own a house in Georgetown?

17 A. Yes.

18 Q. Okay. Do you still own the house in Georgetown?

19 A. No.

20 Q. Okay. And how long did you live at the house in
21 Georgetown for?

22 A. 19 years.

23 Q. 19 years. Just for the record, what was the
24 address, if you remember?

4

Dobrich, Mona 11/10/2006 11:05:00 AM

1 A. I could not say for certain.
2 Q. And I'm only asking because if it was somebody
3 who was on the Board then and not now it might help
4 place the time. Were those meetings that you attended
5 while your children were in the school district?
6 A. Yes.
7 Q. Do you recall any of the prayers that were
8 offered while you were in attendance at those meetings?
9 A. No.
10 Q. Do you recall if any of them were in Jesus's
11 name?
12 A. Yes.
13 Q. Do you recall if all of them were in Jesus's
14 name?
15 A. Yes.
16 Q. Did you have any idea that -- I'll rephrase.
17 It's been testified to earlier that the Indian River
18 School District has a custom or practice of offering a
19 prayer at the beginning of its School Board members?
20 MR. ALLINGHAM: School Board meetings.
21 MR. SHAW: At the beginning, thank you, of
22 its School Board meetings, did you have any -- do you
23 have an understanding that it's a School Board custom
24 and practice of offering a prayer at the beginning of

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1 its meetings?
2 MR. ALLINGHAM: I object to the form of the
3 question.
4 THE WITNESS: I don't understand your
5 question.
6 BY MR. SHAW:
7 Q. Sure. I'll rephrase. You have been to several
8 of the School Board meetings?
9 A. Yes.
10 Q. And at every meeting a prayer has been offered?
11 A. Yes.
12 Q. That you have attended?
13 A. Yes.
14 Q. Would you consider it to be a custom or a
15 practice -- I'll rephrase. Would you expect that every
16 School Board meeting you would have attended would
17 offered a prayer at the beginning?
18 MR. ALLINGHAM: I object to the form of the
19 question.
20 THE WITNESS: I always hoped that there
21 wouldn't be. It always seemed to open with one.
22 BY MR. SHAW:
23 Q. Okay. Did you ever complain about any of those
24 prayers before?

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1 A. At School Board meetings? No.
2 Q. Okay. It was when you met with Dr. Hattier in
3 2004, was that the first time you complained about the
4 prayer at the School Board meeting?
5 A. I did not complain at that time about the prayer
6 at the School Board meeting.
7 Q. Okay. When did you complain about the prayer at
8 the School Board meeting?
9 A. I'm unsure.
10 Q. This would be a good time for a break if you
11 need to use the ladies room.
12 (Recess taken.)
13 BY MR. SHAW:
14 Q. We can go back on the record. Okay.
15 Mrs. Dobrich, you testified that you had not complained
16 about the School Board prayer or prayer at School Board
17 meetings prior to June 15th, 2004, is that correct?
18 A. That's correct.
19 Q. Okay. You also testified in sum or substance
20 that you had heard prayers at School Board meetings
21 previously?
22 A. Correct.
23 Q. Okay. What did you do during those prayers
24 while you were in the meeting?

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1 A. They request that you bow your head.
2 Q. Okay. Did you bow your head?
3 A. Yes.
4 Q. When you left the meeting did you speak with
5 anyone about the meeting?
6 MR. ALLINGHAM: Which meeting?
7 BY MR. SHAW:
8 Q. I'm sorry. You don't remember any of the dates
9 of those previous meetings, do you?
10 A. No.
11 Q. Okay. Let's take this meeting where you bowed
12 your head, do you remember discussing that with anyone?
13 A. Yes, I spoke to my daughter and my husband about
14 it and said that it made me feel really bad to have to
15 do that and I felt like I was being forced to, and I
16 asked my daughter what she did in instances like that.
17 Q. What do you mean by made you feel really bad?
18 A. It made me feel that in my religion you are not
19 to bow to false Gods and it made me feel as if I was
20 being forced to bow down to what I believed to be a
21 false God.
22 Q. Okay. You felt like you had to bow your head at
23 the meeting?
24 A. The people who were running the meeting said bc

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Dobrich, Mona 11/10/2006 11:05:00 AM

1 your head.
 2 Q. Okay. Did you feel like you had any choice not
 3 to bow your head?
 4 A. No, I did not.
 5 Q. Okay. Have you ever attended a wedding at a
 6 church?
 7 A. No.
 8 Q. Have you ever attended anything at a church?
 9 A. No.
 10 Q. Okay. When you spoke with Samantha, your
 11 daughter, about this and asked her what do you do, what
 12 did you mean by that? What does she do when?
 13 A. I asked her what she does when she's at events
 14 such as dinners of her cross country team at the school
 15 when they offer a prayer, and I asked her what she does
 16 during those events when they ask you to do that, to
 17 pray.
 18 Q. So then am I understand to that you knew that
 19 they offered prayers at these other events?
 20 A. Samantha had begin to -- begun to come home and
 21 complain and question why they were doing it. So I
 22 became aware that it was going on more often than what
 23 knew from my own experience of being a student in the
 24 school district.

41

1 Q. Had you ever gone to School Board meetings
 2 before Samantha came home and complained about the
 3 different things that you just talked about?
 4 A. Yes.
 5 MR. ALLINGHAM: Would you just read the
 6 question back for me, please?
 7 BY MR. SHAW:
 8 Q. I'll rephrase the question, Tom.
 9 You just testified that Samantha began to
 10 come home and complain about School Board meetings
 11 that correct?
 12 A. No.
 13 Q. No, excuse me, complain about different events
 14 at school where people prayed, is that correct?
 15 A. Yes.
 16 Q. Okay. Let's do it this way. When did Samantha
 17 begin high school?
 18 A. She graduated in 2004. You begin high school --
 19 Q. In '97?
 20 A. Ninth grade.
 21 Q. No, 2000 rather. In that time -- when did she
 22 -- was she in high school when she began to come home
 23 and complain about prayer at different activities?
 24 A. Yes.

42

1 Q. Okay. So she hadn't complained while she was in
 2 elementary school and middle school?
 3 A. I'm unsure.
 4 Q. Okay. But you are sure that she complained
 5 during the time period 2000 and 2004?
 6 A. That's correct.
 7 Q. Okay. Do you recall whether you had ever gone
 8 to a School Board meeting prior to 2000?
 9 A. I'm unsure.
 10 Q. Okay. But the School Board meetings that you do
 11 recall going to occurred at some time between 2000 and
 12 2004? Let me -- I'll rephrase that.
 13 I know you attended School Board meetings
 14 through Board meeting notes and things like that, at the
 15 earliest June 15th of 2004?
 16 MR. ALLINGHAM: Do you mean your earliest
 17 knowledge is as of June 15th, 2004?
 18 MR. SHAW: That's right, and I'm just
 19 trying to figure out what other meetings you may have
 20 attended and what happened at those meetings. So I'm
 21 trying to pare down the years a little bit considering
 22 now we have a gap of 2000 to 2004, okay.
 23 THE WITNESS: Okay.
 24 BY MR. SHAW:

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1 Q. So do you recall when you may have attended
 2 School Board meetings between those timeframes while
 3 Samantha was in high school?
 4 A. I know I attended a School Board meeting where
 5 it had something to do with can donations where we had
 6 donated cans for Alexander's classroom, and his
 7 classroom had the most donations and our family had the
 8 most donations so we went to a School Board meeting.
 9 I think he was in first grade.
 10 Q. Okay.
 11 A. It might have been third grade. I'm not sure.
 12 Or second grade.
 13 Q. Okay. And how many years older is Samantha than
 14 Alex?
 15 A. Alex was born in '92 and Samantha was born in
 16 '86. Samantha was born September of '86. Alex was born
 17 in July of '92. No. Samantha was born in July of '86,
 18 and Alex was born in September of '92.
 19 Q. Okay. Alex was born in September of 1992?
 20 A. Correct.
 21 Q. Samantha, July of '86?
 22 A. Correct.
 23 Q. So we can agree that they're approximately six
 24 years apart, depending on the month?

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Unsigned

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TAB 6

Doe, Jane 12/5/2006 1:30:00 PM

C O N F I D E N T I A L
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
MONA DOBRICH and MARCO) CONFIDENTIAL/
DOBRICH, Individually and)
as parents and next friend)
of ALEXANDER DOBRICH,)
SAMANTHA DOBRICH, JANE DOE)
and JOHN DOE, Individually)
and as parents and next)
friend of JORDAN DOE and)
JAMIE DOE,)

Plaintiffs,)

v.)

INDIAN RIVER SCHOOL,)
DISTRICT, et al.,)

Defendants.)

Deposition of JANE DOE, taken pursuant to
notice at Drinker, Biddle & Reath, 1100 North Market
Street, Suite 1000, Wilmington, Delaware, beginning at
1:30 p.m., on Tuesday, December 5, 2006, before Terry
Barbano Burke, RMR-CRR and Notary Public.

APPEARANCES:

THOMAS J. ALLINGHAM, II, ESQUIRE
One Rodney Square
Wilmington, Delaware 19801
For the Plaintiff

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

1

1 testified as follows:

2 BY MR. SHAU:

3 Q. Let me just add, Mrs. Doe, I'm going to
4 attempt to try to ask questions that won't lead you
5 down the path of saying your name or your children's
6 names, but in the event that I do, don't worry about it
7 and we will be able to remedy it later.

8 A. Okay.

9 Q. My name is Jarrod Shau, and I represent the
10 defendants in this action.

11 I am going to ask you a bunch of
12 questions about various things that have occurred, and
13 I ask that if you don't understand the question, you
14 ask me to rephrase it, or if you don't hear it, you ask
15 me to ask it again.

16 If you answer the question as it's asked
17 on the record, it's going to look like you understood
18 the question.

19 A. Uh-huh.

20 Q. So if you need for me to repeat it or rephrase
21 it, please ask me to and I will be happy to.

22 One other thing is the court reporter
23 can't see uh-huh or when you shake your head, so if you
24 could answer affirmatively or negatively, however you

3

2 APPEARANCES (cont'd):
3 JARROD SHAU, ESQUIRE
Drinker, Biddle & Reath, LLP
4 One Logan Square
18th and Cherry Streets
5 Philadelphia, Pennsylvania 19103-6996
For the Defendants

6 ALSO PRESENT:

7 TIMOTHY KEARNS

8

9

10 MR. ALLINGHAM: While we were off the
11 record, Mr. Shau and I agreed that we would all try to
12 refer to the witness by her pseudonym of Jane Doe and
13 to members of her family by the pseudonyms given ther
14 in the complaint.

15 We have also agreed, and I want to
16 express my appreciation to Mr. Shau for this
17 suggestion, that we will each, to the extent anyone
18 slips up, we can substitute the appropriate pseudonym
19 in the final transcript so the anonymity of the witness
20 and the members of her family will again be preserved,
21 and I again appreciate that.

22 JANE DOE,
23 the deponent herein, having first been
24 duly sworn on oath, was examined and

2

1 choose, that would be appreciated by the court
2 reporter.

3 A. Okay.

4 Q. If you need to take a break at any point, just
5 let me know, we can stop whenever you want. If you
6 want water or to use the rest room, please let me know.

7 Mrs. Doe, have you ever been deposed
8 before?

9 A. No.

10 Q. What did you do to prepare for this
11 deposition?

12 A. Spoke with my lawyer.

13 Q. Your lawyer, Mr. Allingham?

14 A. Yes.

15 Q. When did you speak with Mr. Allingham?

16 A. Thursday.

17 Q. Did you review any documents during that
18 preparation?

19 A. No.

20 Q. Have you spoken with anyone else regarding
21 your deposition today?

22 A. Just my husband.

23 Q. Mrs. Doe, what town do you currently live in?

24 A.

4

REDACTED

Doe, Jane 12/5/2006 1:30:00 PM

<p>1 it didn't seem to us that board members were rotating. 2 Q. So after reading the policy -- 3 A. And -- 4 Q. I'm sorry, please finish. 5 A. And on No. 3, we did feel that the way the 6 board gave their prayer was proselytizing. 7 Q. I would like to ask you a few questions about 8 that. 9 So when you discussed it, you felt that 10 some of the board prayers that you had heard in the 11 past were proselytizing? 12 A. Yes. If proselytizing is to advance one 13 particular religion, is that what we agree on? 14 Q. If that's your definition, that's fine. 15 A. Then, yes, that would be the case. 16 Q. And it's accurate to say you had only attended 17 two board meetings at the time you reviewed this 18 policy? 19 A. Right. 20 Q. Did the board prayer at those -- 21 A. I'm sorry. I forgot one of the board 22 meetings. Can we go back? 23 Q. Sure. 24 A. The August 24th school board meeting.</p> <p style="text-align: center;">13</p>	<p style="text-align: center;">REDACTED</p> <p>1 Q. 2 a prayer? 3 A. Yes. 4 Q. Do you remember who gave that prayer? 5 A. There was a gentleman, I believe it was 6 Reginald Helms, or it could have been John Evans. I'm 7 not sure exactly. 8 Q. Do you remember what that prayer was? 9 A. Yes. 10 Q. Do you remember the exact words of the prayer? 11 A. I remember the exact words of the end of the 12 prayer, "and in Jesus' name we pray." 13 Q. Before the prayer started, did Mr. Evans or 14 Mr. Helms, whomever gave the prayer, ask you to bow 15 your head? 16 A. I believe so, but I can't be sure. 17 Q. So you don't remember whether or not he did? 18 A. I know that we had been asked to bow our head 19 before and I'm not sure if that was the meeting. 20 Q. Were you asked to bow your head at the August 21 24th, 2004 meeting? 22 A. I can't recall specifically. 23 Q. Is it fair to say you don't remember any 24 specific instance of you being asked to bow your head,</p> <p style="text-align: center;">15</p>
<p>1 Q. August 24? 2 A. Uh-huh. 3 Q. Did you sign in at the August 24th, 2004 board 4 meeting? 5 A. No, I did not. 6 Q. But you did attend the August 24th, 2004 board 7 meeting? 8 A. Yes. 9 Q. Did Mr. Doe attend that meeting? 10 A. No. 11 Q. Did either Jamie or Jordan attend that 12 meeting? 13 A. No. 14 Q. So I'll rephrase. 15 At the time you thought the board was, 16 I'll use your word, advancing religion -- 17 A. Uh-huh. 18 Q. -- through prayer, you had heard three prayers 19 at board meetings? 20 A. Well, I can't recall in 1998. 21 Q. So in 1998 you don't recall that there was a 22 prayer said? 23 A. I don't recall. I might have, you know, 24 gotten there afterwards. I just can't recall.</p> <p style="text-align: center;">14</p>	<p>1 you just generally remember that occurring at one of 2 the meetings you attended? 3 A. My recollection is that the impression given 4 was to bow your head for the prayer, but I can't recall 5 exactly whether we were specifically asked to bow our 6 heads. But I do remember bowing of heads. 7 Q. So it may have been just everyone in the area 8 bowed their heads and it just felt like you should have 9 bowed your head? 10 A. That may be. 11 Q. Did you bow your head during the prayer? 12 A. No. 13 Q. Did you feel like you had to bow your head 14 during the prayer? 15 A. Well, I'm not sure what you mean by "had to." 16 Can you rephrase that? 17 Q. Sure. 18 Even though you didn't bow your head, 19 did you feel any pressure? 20 A. Yes. 21 Q. However, you decided that you weren't going to 22 bow your head? 23 A. Correct. 24 Q. Why did you feel pressured to bow your head</p> <p style="text-align: center;">16</p>

Doe, Jane 12/5/2006 1:30:00 PM

1 even though you didn't?

2 A. Well, I think what you describe as pressure is

3 exactly right, it's peer pressure, you know, to bow

4 your head. Everyone's bowing their head, so you would

5 stand out if you didn't.

6 Q. Did anybody say anything to you about you not

7 bowing your head?

8 A. No. **REDACTED**

9

10 Mr. Helms or Mr. Evans gave the prayer and ended "in

11 Jesus' name," how did that make you feel?

12 **REDACTED**

13 it made us feel uncomfortable and excluded. And that

14 perhaps the board -- well, that's it.

15 Q. Do you remember the prayer that was given at

16 the August 24th, 2004 meeting?

17 A. Yes.

18 Q. Who gave that prayer?

19 A. Donald Hattier.

20 Q. Do you remember that prayer?

21 A. Yes.

22 Q. Were there any religious indications in that

23 prayer?

24 MR. ALLINGHAM: I object to the form of

17

1 the question. You can answer.

2 THE WITNESS: It mentioned God.

3 BY MR. SHAU:

4 Q. Were you offended by Dr. Hattier's prayer?

5 A. I'm not exactly sure what you mean by

6 offended.

7 Q. How did Dr. Hattier's prayer make you feel?

8 A. I would say the same as the other board

9 meeting prayer.

10 Q. It made you feel --

11 A. That it was promoting religion.

12 Q. How did it make you feel like it was promoting

13 religion?

14 A. Well, it was a school board meeting and

15 **REDACTED**

16 Q. What religion did it promote?

17 A. Well, due to the numerous signs around the

18 room of people promoting Christianity and shouting amen

19 and hallelujah, I would say that it promoted

20 Christianity.

21 Q. Let's try and take for a moment all of the

22 people in the crowd with their signs and shouting amen,

23 act as though it didn't happen, although it did.

24 If Dr. Hattier had given his prayer or

18

1 given whatever he said without any of that, would you

2 have found it to be advancing religion?

3 A. Yes.

4 Q. Would you have still found it to be a

5 Christian prayer?

6 **REDACTED**

7

8 Q. He didn't reference Jesus, though, did he?

9 A. Well, it was a long prayer and I do not think

10 it did reference Jesus.

11 Q. You mentioned before that Paragraph 3 you felt

12 that the board did use the prayer to proselytize or

13 advance religion. When you were discussing the prayer

14 with your husband, did you find anything objectionable

15 about the policy?

16 A. About this?

17 Q. Yes, about what's in front of you, PX-9?

18 A. Not that I can recall.

19 Q. I'd like to take a few moments to go through

20 the policy with you now paragraph by paragraph and

21 discuss different aspects about it.

22 Paragraph 1 reads, "In order to

23 solemnify its proceeding, the board of education may

24 choose to open its meetings with a prayer or moment of

19

1 silence, all in accord with the freedom and conscious

2 of the individual adult board member."

3 Would it be okay with you if the board

4 of education opened its meetings with a moment of

5 silence?

6 MR. ALLINGHAM: I object to the form of

7 the question.

8 You can answer.

9 THE WITNESS: It would be okay with me.

10 It wouldn't be my preference.

11 BY MR. SHAU:

12 Q. But you would be able to tolerate that?

13 A. Uh-huh.

14 Q. Would it be acceptable to you if the board

15 opened with a prayer in God's name?

16 MR. ALLINGHAM: I object to the form of

17 the question.

18 BY MR. SHAU:

19 Q. You can answer the question.

20 A. I'm sorry, would it be objectionable if it

21 opened in God's name, is that the question?

22 Q. Yes. To you?

23 A. Yes.

24 Q. Why?

20

TAB 7

Evans. John (Video) 10/18/2006 9:13:00 AM

1	IN THE UNITED STATES DISTRICT COURT	1	
2	FOR THE DISTRICT OF DELAWARE	2	
3	MONA DOBRICH and MARCO : C.A. No. 15-120 (J.	3	TABLE OF CONTENTS
4	DOBRICH, Individually and :	4	TESTIMONY OF JOHN M. EVANS:
5	as parents and next friend :	5	Direct Examination by Mr. Allingham. 3
6	of ALEXANDER DOBRICH, :	6	Certificate of Reporter168
7	SAMANTHA DOBRICH, JANE DOE :	7	
8	and JOHN DOE, Individually :	8	
9	and as parents and next :	9	
10	friend of JORDAN DOE and :	10	
11	JAMIE DOE, :	11	
12	Plaintiffs, :	12	
13	v. :	13	
14	INDIAN RIVER SCHOOL :	14	
15	DISTRICT, et al., :	15	
16	Defendants. :	16	
17	Videotaped Deposition of JOHN M. EVANS,	17	
18	taken pursuant to notice, on Wednesday, October 18,	18	
19	2006 at 9:13 a.m. at 31 Hosier Street, Selbyville,	19	
20	Delaware, reported by Lorena J. Harthett, a Registered	20	
21	Professional Reporter and Notary Public.	21	
22	APPEARANCES:	22	
23	THOMAS ALLINGHAM, ESQUIRE	23	
24	RICHARD HORVATH, ESQUIRE	24	
	BRIAN LENHARD, ESQUIRE		
	One Rodney Square		
	Wilmington, DE 19801		
	Attorney for the Plaintiff		
	WILCOX & FETZER		
	1330 King Street - Wilmington, DE 19801		
	(302) 655-0477		
	www.wilfet.com		
1		3	

1	APPEARANCES (CONTINUED):	1	VIDEOGRAPHER: Okay. This is the
2	JARROD SHAU, ESQUIRE	2	videotaped deposition of John M. Evans taken
3	Drinker, Biddle & Reath, LLP	3	by the plaintiffs in the matter of Dobrich
4	One Logan Square	4	et al. versus Indian River School District,
5	18th and Cherry Streets	5	et al., Civil Action Number 15-120.
6	Philadelphia, PA 19103-6996	6	The deposition is taking place at 31
7	Attorney for the Defendants	7	Hosier Boulevard in Selbyville, Delaware, on
8		8	October 18, 2006 at approximately 9:13 a.m..
9		9	The court reporter is Lorena Harthett from
10		10	the firm of Wilcox and Fetzer.
11		11	My name is Mark Buckmaster, a video
12		12	specialist from Discovery Video Services
13		13	Incorporated in association with Wilcox and
14		14	Fetzer. Counsel will now introduce
15		15	themselves and the reporter will swear in
16		16	the witness.
17		17	MR. ALLINGHAM: My name is Tom
18		18	Allingham. I represent the plaintiffs, and
19		19	with me are Richard Horvath and Brian
20		20	Lenhard.
21		21	MR. SHAU: My name is Jarrod Shaw, and
22		22	I represent the defendants.
23		23	
24		24	
2		4	

Evans. John (Video) 10/18/2006 9:13:00 AM

1 Q. Is it your view, as a board member, that the
2 words "in order to solemnify its proceedings" are the
3 functional equivalent of the words "in order to seek
4 God's guidance for the decisions to be made at that
5 meeting."?

6 A. I believe that, yes.

7 Q. Okay. And I forgot to say at the beginning
8 of the deposition, it's really important for the court
9 reporter, in particular, that we don't trample on each
10 other's questions and answers. It's the way we all
11 have conversations, but we need to have a specialized
12 sequential conversation in the depositions. Okay?

13 A. I understand.

14 MR. ALLINGHAM: So could I have the
15 last question and answer read back?

16 (The reporter read back the last
17 question and answer.)

18 BY MR. ALLINGHAM:

19 Q. Okay. So that at least at, for your
20 understanding as a board member of the Policy BDA.1
21 which we have in front of us, it doesn't matter
22 whether the policy says, "In order to solemnify its
23 proceedings" or whether the policy says, "in order to
24 seek God's guidance, will, protection and grace," the

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1 meaning would be the same?

2 A. Yes, to me it would.

3 Q. Okay. Did anyone suggest at anytime in the
4 consideration of this policy that the policy ought to
5 say, "in order to seek God's guidance, will,
6 protection and grace."?

7 A. I don't remember.

8 Q. Do you remember any discussion at all of the
9 purpose articulated in the board prayer policy, that
10 is, quote, "in order to solemnify its proceedings."?

11 A. Would you repeat that, please?

12 Q. Yes, do you remember anyone discussing the
13 purpose of the policy at anytime during the board
14 meetings?

15 A. I don't recall, no, I don't recall.

16 Q. Let's make my question a little more
17 specific. Do you recall anyone offering any comment
18 whatsoever on the language, "in order to solemnify its
19 proceedings"?

20 A. I don't recall.

21 Q. When did the board first, first begin to
22 consider the issue of school board prayer?

23 A. When it began to first consider it? It would
24 have been sometime in the summer of 2004.

42

1 Q. And what prompted the board's consideration
2 of that issue was Mrs. Dobrich's expression of
3 concerns that began with the graduation prayer in
4 early summer of 2004; correct?

5 A. Yes.

6 Q. Okay. Let me show you what we have marked as
7 PX15. When I say PX, it's short for plaintiff's
8 exhibit.

9 A. Okay.

10 Q. When we do that, that enables someone looking
11 at the transcript to be able to reconstruct what
12 document we were looking at.

13 If you look at the last page of PX15, you
14 will see Mrs. Hobbs' signature. Actually, it's a
15 signature stamp, but it's meant to be Mrs. Hobbs'
16 signature; correct?

17 A. Yes.

18 Q. And does that tell you that these are the
19 final minutes of the June 15, 2004 board meeting?

20 A. Yes.

21 Q. All right. You are recorded as being present
22 under roll call on the first page?

23 A. Yes, I am.

24 Q. And do you recall that you were present at

43

1 the June 15, 2004 school board meeting at North
2 Georgetown Elementary School in the cafeteria?

3 A. Yes.

4 Q. Now, this would have been the first board
5 meeting after the 2004 graduation; is that right?

6 A. That's correct.

7 Q. If you will turn to page two of the minutes,
8 you will see under the public comments section that
9 one person made a public comment, and that's
10 Mrs. Dobrich; is that right?

11 A. Yes, I see that.

12 Q. And what the minutes record is that
13 "Mrs. Dobrich, a parent of the Jewish faith, expressed
14 concern about prayers at the school district events.
15 She asked that the board consider using a
16 nondenominational prayer that would be appropriate for
17 all faiths at events such as graduations, etcetera."

18 Do you see that?

19 A. Yes, I do.

20 Q. Do you recall Mrs. Dobrich making that
21 comment?

22 A. I recall Mrs. Dobrich being there, but I
23 can't recall her specific statement, but I assume the
24 board minutes would record such.

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TAB 8

Hastings, Gregory (Video) 10/13/2006 9:07:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually, 5 as parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 Civil Action 11 vs. NO. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 Deposition of GREGORY HASTINGS, taken 15 pursuant to notice at the Indian River School 16 District, 31 Hosier Street, Selbyville, Delaware, 17 beginning at 9:07 a.m. on October 13, 2006 before 18 David A. Sroka, Registered Professional Reporter and 19 Notary Public. 20 APPEARANCES: 21 THOMAS ALLINGHAM, ESQ. 22 RICHARD HORVATH 23 BRIAN LENHARD 24 P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs JARROD D. SHAW, ESQ. Drinker Biddle & Reath, LLP One Logan Square Philadelphia, Pennsylvania 19103-6996 For the Defendants</p> <p style="text-align: center;">2</p>	<p>1 GREGORY HASTINGS, 2 The Witness herein, called for examination by 3 the Plaintiffs, having been duly sworn to tell the 4 truth, the whole truth, and nothing but the truth, 5 was examined and testified as follows: 6 EXAMINATION BY MR. ALLINGHAM: 7 Q. Good morning, Mr. Hastings. I am going to 8 ask you to clear up something that has been bugging 9 me. Is it H-O-S-I-E-R or H-O-O-S-I-E-R? Is it 10 pronounced Hosier or Hosier? 11 A. In this area we pronounce it Hosier. 12 Q. Do you know how it's spelled? 13 A. I believe it's one O. 14 Q. Thanks. Have you ever been deposed before? 15 A. Yes, I have, yes. 16 Q. In what context? 17 A. As a defendant. 18 Q. What kind of a case? 19 A. It was a teacher in our high school and 20 there was -- she brought on a suit, I have to 21 reflect, this has been 12 years, I guess. 22 Q. All right, I don't need that much detail. 23 That was a suit by a teacher? 24 A. Yes.</p> <p style="text-align: center;">3</p>
<p>1 MS. DUPHILY: This is the 2 videotape deposition of Mr. Greg Hastings, 3 taken by the Plaintiff, in the 4 matter of Dobrich, et al. versus Indian 5 River School District, at al., case 6 number 15-120. 7 The deposition is taking place at 31 8 Hosier Boulevard, Selbyville, Delaware. We 9 are going on the record on October 13, 10 2006 at approximately 9:07 a.m.. The court 11 reporter is Dave Sroka from the firm of 12 Wilcox & Fetzer. My name is Lindsay 13 duPhily and I am with Discovery Video 14 Services in association with Wilcox & 15 Fetzer. 16 I will now ask counsel to 17 identify themselves on the record, and then 18 the court reporter will swear in the 19 witness. 20 MR. ALLINGHAM: I am Tom Allingham 21 representing the Plaintiffs. With me are 22 Rick Horvath and Brian Lenhard. 23 MR. SHAW: Jarrod Shaw 24 representing the defendants.</p> <p style="text-align: center;">2</p>	<p>1 Q. And it was against you in your capacity as 2 a School Board member? 3 A. Capacity as a School Board member? 4 Q. Yes, sir? 5 A. Yes. 6 Q. Have you ever testified at trial? 7 A. I have been an expert witness in Small 8 Claims Court, that's the extent of it. 9 Q. Did the court issue an opinion in that 10 case? 11 A. Yes. 12 Q. Were you mentioned in the opinion? 13 A. I don't believe so. 14 Q. What was your area of expertise in that 15 testimony? 16 A. I had provided architectural design for the 17 product. This has been a long time, too but -- 18 Q. Let me cut you off. It has nothing to do 19 with issues of religion in the schools, right? 20 A. No. thank you, no. 21 Q. What is your -- I am trying to keep this 22 limited to the issues here. You are employed as an 23 architect? 24 A. Yes, I own a small architectural design</p> <p style="text-align: center;">4</p>

Hastings, Gregory (Video) 10/13/2006 9:07:00 AM

1 a legislative body, has anyone expressed any
 2 concerns or reservations or drawn any distinctions
 3 between the General Assembly and its functions, for
 4 example, and the School Board and its functions?
 5 A. Not to my knowledge.
 6 Q. Legislative bodies pass laws, is that
 7 correct?
 8 A. Yes.
 9 Q. And those laws are then enforced by a
 10 different branch of government, correct?
 11 A. Correct.
 12 Q. The School Board doesn't pass laws, but it
 13 passes policies, correct?
 14 A. Correct.
 15 Q. Unlike the General Assembly the School
 16 Board also enforces those policies, correct?
 17 A. Yes.
 18 Q. At any time during the discussion of
 19 whether the Board was a legislative body did anyone
 20 raise or discuss the fact that students are
 21 consistently present at regular Board meetings?
 22 A. I don't recall.
 23 Q. It is a fact that at least since the mid
 24 1990s students were consistently present at regular

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1 Board meetings?
 2 A. Yes.
 3 Q. And so when you walk into the Board meeting
 4 or walk out to take your seat on the stage or where
 5 ever the meeting is being held, you expect that
 6 students will be in the audience?
 7 A. Most generally, yes.
 8 Q. Sometimes it's only half a dozen students,
 9 maybe it's just the ROTC color guard?
 10 A. Yes.
 11 Q. Sometimes, I've seen some minutes where it
 12 looked like there were 50 or more students there, is
 13 that right?
 14 A. Yes.
 15 Q. Can you think of any regular Board meeting
 16 where there have been no students present?
 17 A. Probably in the summer months.
 18 Q. Oh, I should have been clear about my
 19 question. Can you think of any regular Board
 20 meeting during the academic year when students were
 21 not present?
 22 A. No.
 23 Q. All right, I am going to show you another
 24 exhibit, this is PX12.

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1 Mr. Hastings, this is a long document, you
 2 take as long as you want to to read it, but my first
 3 question to you is have you ever seen it before, and
 4 you may be able to answer that question without
 5 reading the whole document?
 6 A. I may have, but I can't recall. It's been
 7 two years.
 8 Q. If you look at the fourth page of the
 9 exhibit?
 10 A. Uh-hum.
 11 Q. You will see there are five numbered
 12 paragraphs at the bottom of the page, the fifth one
 13 of which carries over to the next page. With some
 14 extremely minor language changes can you confirm
 15 that the five numbered paragraphs on PX12 are
 16 essentially identical to the numbered paragraphs of
 17 the final Board policy? The only change I can tell
 18 you is I know that there is in paragraph four just
 19 is changed to only, but apart from that do you see
 20 any other changes?
 21 A. No.
 22 Q. Do you know who drafted PX12?
 23 A. I suspect the Neuberger firm.
 24 Q. It says up at the top left the Rutherford

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1 Institute and the Neuberger firm, is that the basis
 2 for your answer?
 3 A. Yes.
 4 Q. Did anyone ever tell you that the board
 5 policy as it was presented to you for a first
 6 reading on September 28th had been drafted by the
 7 Neuberger firm?
 8 A. I can't recall.
 9 Q. In an earlier answer you told me that your
 10 normal process is to have Board policies checked by
 11 the Board attorney, correct?
 12 A. Yes.
 13 Q. In the summer and fall of 2004 who was the
 14 Board's attorney?
 15 A. If memory serves me correctly it was Jim
 16 Griffin.
 17 Q. Do you know whether anyone on the Board or
 18 the policy committee asked Mr. Griffin to
 19 participate in the drafting of the Board policy on
 20 School Board prayer?
 21 A. I don't want to assume, I know what happens
 22 when you assume, but knowing our procedure and the
 23 policy committee I would -- sitting here today I
 24 would to -- that was the normal procedure, that it's

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Hastings, Gregory (Video) 10/13/2006 9:07:00 AM

1 from the microphone, stop talking?
 2 A. Another member of the Board other than the
 3 president?
 4 Q. Yup.
 5 A. It may have occurred, but I don't recall
 6 any particular date or time.
 7 Q. The last 20 minutes or half an hour we've
 8 talked about the atmosphere or the overall ambience
 9 of the meeting, which you characterized as a little
 10 disturbing, there were outbursts, the crowd
 11 mentality, or mob mentality, the crowd got a little
 12 unruly. I showed you the Johnson comments and the
 13 crowd's reaction both to that with cheers and with
 14 laughter during his comments. I showed the clip of
 15 the announcement that the meeting would open with a
 16 prayer and the raucous reaction to that.
 17 Do you have a view as to whether the prayer
 18 given on August 24th was effective to make the crowd
 19 solemn, respectful and courteous?
 20 MR. SHAW: I am going to object,
 21 I don't think you showed him the prayer
 22 that day.
 23 MR. ALLINGHAM: I didn't and
 24 that's not what I said.

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1 A. I don't recall what the prayer was that
 2 particular Board meeting.
 3 Q. I am going to start the question again. It
 4 doesn't matter what the prayer was a prayer was
 5 offered at the meeting, correct?
 6 A. Yes.
 7 Q. And based on the conduct at that meeting
 8 which I summarized a minute ago, do you think
 9 whatever the prayer was, do you think it was
 10 effective to solemnize the proceedings?
 11 A. I believe it was for the individuals of the
 12 Board and the purpose it's given, yes.
 13 Q. Okay, and that's very helpful because I
 14 wanted to ask you, is the solemnization, which is
 15 the purpose of the prayer, as the policy reflects,
 16 is that solemnization directed to the Board members
 17 and their discharge of their duties, or is it
 18 intended to affect everybody in the audience?
 19 A. In my opinion it's for the immediate
 20 members of the Board.
 21 Q. Okay. And when the policy says in order to
 22 solemnize the proceedings, and you've now told me
 23 that's the intended recipient of the solemnization,
 24 if you will, are the Board members, when the policy

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1 says in order to solemnify the proceedings, what do
 2 you understand that to mean?
 3 A. Well, given the responsibility of a Board
 4 member, and particularly as I know it to be in this
 5 particular school district, because geographically
 6 we are the largest in the state, and we have many
 7 buildings, so the whole facet of our charge
 8 obviously there are a lot of decisions to be made
 9 and sometimes they are very controversial, sometimes
 10 very testy, and also looking at the bigger picture
 11 there is a lot of financial issues at stake.
 12 So, sitting there as a member of the Board
 13 one hopes, or I hope, that I make the very best
 14 decision I possibly can for the sake of the district
 15 and the children in the school district, and I want
 16 all the help that I can get.
 17 Q. When you say, "I want all the help that I
 18 can get," that means that if you can invoke some
 19 divine guidance to guide your judgment that would be
 20 helpful?
 21 A. That's correct.
 22 Q. Is it necessary to offer a prayer publicly
 23 in order to invoke divine guidance for those
 24 judgments?

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1 A. I don't suppose it's necessary, no.
 2 Q. You mentioned the financial issues, does
 3 the Board deliberate over financial issues in
 4 regular session or in executive session?
 5 A. All financial issues are deliberated in
 6 regular session.
 7 Q. I forgot to ask you a question about
 8 Mr. Johnson, and the clip I showed you. Would you
 9 agree with me that members of the Board greeted
 10 Mr. Johnson warmly when he came to the podium?
 11 A. None of us got up and shook his hand.
 12 Q. No, sir and that's -- fair enough. You
 13 recall somebody made a joke about calling him Earl
 14 Johnson?
 15 A. Do I recall it, no, no.
 16 Q. In the stack there you have PX9 which is
 17 the actual Board Policy which says, the policy
 18 opens, it's first phrase is, "In order to solemnify
 19 its proceedings the Board of Education may choose to
 20 open its meetings with a prayer or moment of
 21 silence." Is there any other purpose for the prayer
 22 or moment of silence other than to solemnify the
 23 Board's proceedings, as you've defined that?
 24 A. No.

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Hastings, Gregory (Video) 10/13/2006 9:07:00 AM

1 Q. A couple of questions again about the
2 August 24th Board meeting but you won't have to make
3 judgments, at least not as many judgments as I asked
4 you about before. Do you recall that state
5 representatives Hocker and Atkins spoke at the
6 meeting?
7 A. Yes.
8 Q. And do you recall that they were joined at
9 the podium by representative Ewing?
10 A. I believe so, yes.
11 Q. And did -- do you recall that the
12 representatives provided or read a letter during
13 their public comment section of the meeting?
14 A. Yes.
15 Q. And do you recall that that letter said
16 that they as representatives could not recognize the
17 separation of God from state?
18 A. Maybe. I can't recall specifically. I
19 just know that they did read from a letter, but the
20 content I can't recall.
21 Q. Do you think it was appropriate that
22 representatives stood at the podium and expressed
23 their views as representatives on this issue?
24 A. I'll say it struck me strange.

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1 Q. Why?
2 A. In this climate, this day and time as we
3 are sitting here knowing the delicateness of this
4 issue at hand, I was surprised two public officials
5 came forward in that light and expressed their
6 opinions, being politicians.
7 Q. Have you ever had anyone tell you that they
8 see this case as about protecting Christian prayer?
9 A. No.
10 Q. Have you ever had anyone tell you that they
11 see this case as about protecting Christian values?
12 A. You are asking me if I had someone
13 specifically in my face tell me that's what they
14 believe or that's the statement made to such?
15 Q. Yes, let me take that question first. So,
16 let's take the specific question, have you ever had
17 anyone actually say to your face that they believe
18 that this case is about protecting Christian values?
19 A. No.
20 Q. Now, let's be a little more general, have
21 you heard that sentiment expressed, or have you
22 heard that sentiment -- I'll do it in pieces. Have
23 you heard that sentiment expressed?
24 A. Yes.

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1 Q. By whom?
2 A. I can't specifically tell you. I mean in
3 the course of these two years, whether it would be
4 meeting someone on the street or after a Board
5 meeting or whatever what have you, I have to tell
6 you I've heard that sentiment but who, whom, I don't
7 know.
8 Q. More than once?
9 A. Probably.
10 Q. Would it be fair for me to understand that
11 that is a common sentiment in the Indian River
12 School District?
13 A. Yes.
14 Q. I am going to go back to a specific
15 question, have you heard anyone say, again to you
16 use your phrase, to your face, that they understand
17 the School Board Prayer Policy as protecting
18 Christian values?
19 A. Repeat it, please?
20 Q. Have you heard anyone say to your face that
21 they view the School Board Prayer Policy as
22 protecting Christian values?
23 A. No.
24 Q. Have you heard that sentiment expressed?

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1 A. No, I don't believe so.
2 Q. So, it's the defense of this case that is
3 viewed as defending Christian values?
4 A. I believe.
5 Q. Have you discussed with anyone whether the
6 2006, the results of the 2006 School Board election
7 was an endorsement of the stance the School Board
8 has taken in support of School Board prayer?
9 A. What the result of the Board election in
10 2006?
11 Q. An endorsement of the stance the School
12 Board has taken in support of School Board prayer?
13 A. Most definitely.
14 Q. Is that also your view?
15 A. That the stance was taken as such?
16 Q. That the result was an endorsement of the
17 stance that the School Board took?
18 A. Yes.
19 Q. Have you ever discussed with anyone whether
20 someone who opposes School Board prayer could get
21 elected to the School Board in Indian River?
22 A. Interesting question.
23 Q. Let me rephrase it. Let me just ask the
24 question directly, do you believe that someone who

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TAB 9

Hattier, Donald (Video) 10/10/2006 9:36:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually 5 as parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. Civil Action 11 No. 15-120 12 13 INDIAN RIVER SCHOOL DISTRICT, ET AL., 14 Defendants 15 16 DEPOSITION OF DONALD HATTIER, taken at th 17 Indian River School District, 31 Hosier Street, 18 Selbyville, Delaware beginning at 9:36 a.m. on 19 October 10, 2006 before David A. Sroka, Registered 20 Professional Reporter and Notary Public. 21 22 APPEARANCES: 23 THOMAS ALLINGHAM, ESQUIRE 24 RICHARD HORVATH, ESQUIRE BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p>1</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Dr. Donald G. 3 Hattier taken by the Plaintiff in the 4 matter of Dobrich, et al., versus Indian 5 River School District, et al., case number 6 15-120. This deposition is taking place at 7 31 Hosier Boulevard, Selbyville, Delaware. 8 We are going on the record on October 10, 9 2006 at approximately 9:37 a.m. 10 The court reporter is David Sroka 11 from the firm of Wilcox & Fetzer, 12 Wilmington, Delaware. My name is Lindsay 13 duPhily I'm the videotape specialist of 14 Discovery Video Services in association 15 with Wilcox & Fetzer. 16 Counsel will now introduce 17 themselves and then the court reporter will 18 swear in the witness. 19 MR. ALLINGHAM: Tom Allingham of 20 Skadden Arps. With me is Rick Horvath and 21 Brian Lenhard also of Skadden Arps, 22 representing the Plaintiffs. 23 MR. GOSSELIN: Jason Gosselin of 24 drinker Biddle & Reath representing the</p> <p>3</p>
<p>1 2 3 JASON P. GOSSELIN, ESQUIRE 4 Drinker Biddle & Reath LLP 5 One Logan Square 6 Philadelphia, Pennsylvania 19103-6996 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>2</p>	<p>1 defendants. 2 DONALD HATTIER, 3 The Witness herein, called for examination by 4 the Plaintiffs, having been duly sworn to tell the 5 truth, the whole truth, and nothing but the truth, 6 was examined and testified as follows: 7 MR. ALLINGHAM: Jason, I just want 8 to put a couple of things on the record. 9 The first one is, it is my impression that 10 you are not going to be interrupting 11 this deposition very much, but I want you 12 to know that if you want to make relevance 13 objections feel free. I'm not going to 14 accept invitations to explain the relevance 15 of my questions, I think that they are 16 relevant. 17 Q. Mr. Hattier, I represent the Plaintiffs in 18 this action against the district and I'm going to be 19 asking you some questions. If you don't understand 20 anything that I ask please tell me, don't answer the 21 question. If you do answer it the judge and 22 ultimately even the jury will probably assume that 23 you did understand it, so if you do have a problem 24 with a question cut me off at the pass now, okay?</p> <p>4</p>

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1 lawyers in his law firm, Drinker Biddle & Reath?
 2 A. I believe that to be true.
 3 Q. Okay. You full name is Donald G. Hattier,
 4 is that correct?
 5 A. Yes, sir.
 6 Q. And you were born on October 1953?
 7 A. That is correct.
 8 Q. Were you born in Delaware?
 9 A. No, sir.
 10 Q. Where were you born?
 11 A. I was born in Triesta, Italy in the 381st
 12 infantry hospital.
 13 Q. When did you come to the United States?
 14 A. In 1962.
 15 Q. How long have you lived in Delaware?
 16 A. I was lived in Delaware since February no,
 17 I have lived her Delaware since approximately March
 18 of 1990.
 19 Q. Do you consider yourself a long time
 20 resident of Sussex County?
 21 A. I do, yes, sir.
 22 Q. Would you agree with me as a general
 23 proposition that in Sussex County information and
 24 news tends to travel by word of mouth as much as it

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1 does by newspaper or other formal media?
 2 A. In general terms I think that's probably
 3 true.
 4 Q. I asked you earlier about your children,
 5 you have two children, is that correct?
 6 A. I have four children, sir.
 7 Q. Four children. Would you tell me their
 8 names?
 9 A. Kristin, age 16, Georgette age 14, Hanna
 10 age 11 and Donald age eight.
 11 Q. Do they attend district schools?
 12 A. Yes, sir.
 13 Q. Which schools do they attend?
 14 A. I have two, the oldest two are at Indian
 15 River High School at the current time. Hanna is at
 16 Selbyville Middle School and Donald is currently at
 17 the Lord Baltimore School.
 18 Q. My information may be a little stale so let
 19 me just ask you, is your current address R.D. Box
 20 114 Dagsboro?
 21 A. That was the old address before we went
 22 911.
 23 Q. So, what's he address now?
 24 A. 30682 Holts Landing Road.

22

1 Q. How long have you lived there?
 2 A. Since March of 1990.
 3 Q. So, you were 27 when you moved her, 26, 27,
 4 mid 20s?
 5 A. No, 30, 1990, 1953, 37, 36, 37, somewhere
 6 in there.
 7 Q. I'm sorry, right. Where did you attend
 8 college?
 9 A. I attended at the Virginia Polytechnic
 10 Institute State University, currently known as
 11 Virginia Tech.
 12 Q. And when did you graduate?
 13 A. 1975. That was for my Bachelor's in
 14 Science.
 15 Q. I assume you have some kind of MD degree?
 16 A. I have a Chiropractic Degree, that's know
 17 as a DC, Doctor of Chiropractic and that's from the
 18 National College of Chiropractic and I graduated
 19 there in December of 1985.
 20 Q. I assume that you didn't go straight to
 21 chiropractic school?
 22 A. No, sir.
 23 Q. What did you do in-between?
 24 A. In-between I ran a McDonald's for two and a

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1 half years, I went to work for the State of Virginia
 2 in a power plant as a superintendent and a steam
 3 fitter, I taught motorcycle safety at the Northern
 4 Virginia Community College for a number of years,
 5 and in the process injured my spine several times.
 6 Then I was hired by IBM to work as what was called a
 7 customer engineer on fixing typewriters, mag cards,
 8 copiers and it was through that time period that I
 9 was teaching motorcycle safety and my spine kept
 10 acting up. I was slated for surgery for a sciatica
 11 case and basically discovered chiropractic. I'm
 12 single, I'm age 29, I sell my townhouse, my Cadillac
 13 I go back do college.
 14 Q. And you are employed now as a chiropractor?
 15 A. Yes, sir.
 16 Q. Self-employed?
 17 A. Yes, sir.
 18 Q. Is there a name of the practice or is it
 19 simply Dr. Donald G. Hattier?
 20 A. My sister and I recently formed loose
 21 partnership, we call ourselves the Beach View Health
 22 Associates. Previous to that it was the Beach View
 23 Chiropractic Center.
 24 Q. Where is your office located?

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1 president Walls called the meeting to order and then
 2 asked Dr. Hattier to give a prayer?
 3 A. Yes, sir.
 4 Q. Did you know in advance that a Mr. Walls
 5 was going to ask you to give the prayer at that
 6 meeting?
 7 A. Yes, sir I did.
 8 Q. How did you know that?
 9 A. I volunteered.
 10 Q. When did you volunteer?
 11 A. It could have been the night before or at
 12 some other time, I don't remember.
 13 Q. And when you volunteered did you have in
 14 mind the prayer that you wanted to give?
 15 A. Yes, I did.
 16 Q. And where did you get that prayer?
 17 A. It might have been brought in partially by
 18 Mr. Neuberger at some point, and again I wish I
 19 could remember when he actually talked to us, I
 20 don't, okay. The other thing is I went on the
 21 Internet and I looked at about a half a dozen
 22 historical prayers of various time periods and
 23 decided on which one I felt fit the occasion the
 24 best and that's what I gave.

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1 Q. What made you choose that particular
 2 prayer?
 3 A. I like to consider himself myself an
 4 amateur historian. I spend enough hours at VPI so
 5 that I could have a minor in history on paper. VPI
 6 does not minors, however, and I have continued with
 7 a love of history all of my life and I felt that
 8 since this is a contentious issue that if you would
 9 like to argue with somebody you can argue with
 10 George Washington. If it was good enough for George
 11 Washington to give then why is it not good enough
 12 for me to give also.
 13 Q. A rhetorical question?
 14 A. A rhetorical question, yes, sir.
 15 MR. GOSSELIN: You can answer it.
 16 Q. The text of the prayer that you gave is not
 17 in the minutes?
 18 A. No.
 19 Q. We have the prayer or we know the prayer
 20 that you gave?
 21 A. Uh-hum.
 22 Q. Is it correct that that's not a prayer that
 23 invokes particular religions, sorry. Your prayer
 24 does not invoke the name of Jesus Christ?

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1 A. That is correct.
 2 Q. And was that by design?
 3 A. No, that's more in keeping with the way I
 4 personally would pray.
 5 And actually if I looked, I gave my only
 6 copies of that to several reporters when they left,
 7 so personally do not have a copy of it. I mean if
 8 you have a copy of it I'd be happy to discuss it
 9 with you. But the way George Washington and some of
 10 the contemporaries of the founding fathers used
 11 words like the creator of our divine providence, et
 12 cetera. The way they used the words would have been
 13 different that perhaps in the way we do, but it may
 14 have meant exactly the same thing if you had used
 15 the words Jesus Christ. So, I would have to look at
 16 exactly what I said. If you guys have a copy I'd
 17 love to see it.
 18 Q. You brought more than one copy of the
 19 prayer to the meeting?
 20 A. Yes, I did.
 21 Q. Was that for the purpose of distributing it
 22 to reporters afterwards?
 23 A. I figured somebody might want a copy of it.
 24 I seem to remember bringing two. One of

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1 them I had some handwritten notes on. I go through
 2 multiple drafts of things which means that I would
 3 have probably brought two of them. You know, one
 4 that a more rough and another one that I scribbled
 5 something else on. I do recall giving them both
 6 away.
 7 Q. Do you know who you gave them to?
 8 A. No, sir. There were quite a few people
 9 there that night.
 10 Q. Yes, so I understand. The minutes reflect
 11 that a president Walls recommended that the agenda
 12 be amended to allow 45 minutes for public comments
 13 due to the large number of persons who requested to
 14 speak at the meeting. That was approved 10 to
 15 nothing. You voted for that, I take it?
 16 A. Yes, sir.
 17 Q. Was there any consideration given to
 18 permitting as much time as necessary to let everyone
 19 speak?
 20 A. The general speaking time period is 15
 21 minutes and given the large numbers of people that
 22 were there, we increased it to 45 minutes which is
 23 basically three time what we would normally do, and
 24 then I believe we always allowed some time at the

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1 which the Madelyn Murray-O'Hare comment was made?
2 A. Not that I'm aware of. I can't tell you
3 that.

4 Q. Let me ask you personally, Dr. Hattier. Do
5 you have same sympathy with the Doe's desire to
6 remain anonymous given what happened at the August
7 24th meeting?

8 MR. GOSSELIN: Objection.
9 Go ahead.

10 A. You know, I have a sympathy for them but
11 let me state that I actually have a high degree of
12 respect for the Dobrich family, all right, I really
13 do. I have a high respect for them because they
14 believed in something and they were willing to step
15 forward, just as I am now to defend the beliefs that
16 I have him. All right, and I think that if somebody
17 wishes to hide behind anonymity on an issue, you
18 know they are doing it out of fear or whatever, but
19 if they are right they are right.

20 And my understanding is that the thing that
21 the Doe family was originally complaining about,
22 which had something to do with the Bible Club, which
23 I was not aware of at the time period, okay there
24 were right, we fixed it. We corrected it. Okay,

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1 and other than I personally don't see what the issue
2 is.

3 Q. You were personally present and observed
4 the treatment of Alex and Samantha Dobrich at the
5 August 24th Board meeting, correct?

6 A. Yes.

7 Q. Do think that the treatment of those two
8 children at that meeting, by community members,
9 might legitimately cause parents to be concerned
10 about the treatment that their children would get if
11 they relinquished anonymity?

12 A. Yes.

13 Q. I asked you earlier whether you are that
14 any of your children had tried to confirm who the
15 Does were and you said you were not aware of that?

16 A. No, I would prefer that my children not
17 have a clue as to who they.

18 Q. Am I also correct that you are not aware
19 that your wife or any member of your family has
20 taken any action to try to confirm who the Does are.

21 A. I would hope not.

22 Q. This is closing the loop for the record, I
23 would hope not means no you not area?

24 A. Take that as a no, yes, well, whatever, no.

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1 Q. This can go quickly. I have some
2 statements that you were quoted as having been to
3 the media. I really don't want to, I don't think
4 debate these statements just want to confirm that
5 you were quoted accurately?

6 A. Okay.

7 Q. I may have a question or two but I think
8 it's going to be --

9 MR. ALLINGHAM: This is Hattier
10 24. The Bates number is P104 and 105.

11 (WHEREUPON Hattier Exhibit 24 was
12 marked for identification)

13 Q. There is taken from Sussex County Online.
14 You are reported in the one, two, three four, fifth
15 paragraph as having been, as having said,
16 "Dr. Donald Hattier who opened last week's meeting
17 with a prayer penned by George Washington admitted
18 the School Board's current stance on prayer wouldn't
19 hold up in court?"

20 A. Incomplete quote.

21 Q. Can you complete it for me?

22 A. Yes. Graduation prayer. Graduation prayer
23 and prayer at school luncheons, other things. If
24 you compare what we were doing with the DOJ cite it

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1 would not hold up. Incomplete quote.

2 Q. Okay, so you did say this but you weren't
3 referring to the School Board prayer?

4 A. No, I was not, I was referring to the other
5 issues.

6 Q. And let me just ask you the question, and
7 are the current policies which have been adopted
8 since that time in your have view in compliance with
9 the Constitution?

10 A. Lordy, I hope so.

11 MR. ALLINGHAM: This is Hattier
12 25. And I will tell you in advance, Dr.
13 Hattier I have only the second page of this
14 article from The Wave. I don't know why.
15 It bears Bates number P122. I will see if I
16 can find the first page.

17 (WHEREUPON, Hattier Exhibit 25 was
18 marked for identification)

19 A. Yes, final paragraph.

20 Q. Is your comment accurately reported there?

21 A. Yes.

22 Q. Okay?

23 A. And again though that's based on my
24 findings afterwards. Okay, in other words, you look

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1 back on what the law had been or had not been, start
2 looking at the aforementioned, you know citing, and
3 as you read the court cases, so that's where the
4 decades part came in.

5 Q. Understood.

6 A. Okay.

7 MR. ALLINGHAM: This is
8 Hattier 26 bearing Bates numbers P290
9 through 293.

10 (WHEREUPON Hattier Exhibit 26 was
11 marked for identification)

12 Q. This is an August 27 article from the
13 Coastal Point?

14 A. Okay.

15 Q. If you --

16 A. I can't even see myself in there if you can
17 help me out, please.

18 Q. If you will look at the third page, the
19 last column, the second full paragraph you will see
20 district four representative Dr. Donald Hattier, do
21 you see that?

22 A. Uh-hum.

23 Q. "Responded to further public comments on
24 the issue by stating his personal support for prayer

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1 but acknowledging that the Board had no expectation
2 that it would be able to win any case taken to the
3 court with a pro prayer stand. He said the Board
4 was proceeding in forming the policy under the
5 guidelines of the State Education Department and
6 with the advice of the district's legal counsel?"

7 A. Same incomplete quote. This has to be
8 again with the baccalaureate and the and graduation
9 policies.

10 Q. And did individual Board members respond to
11 the public comment section with their own views?

12 A. I don't think so.

13 Q. Other than yourself?

14 A. You mean in terms of what I am saying here?

15 Q. Yeah.

16 A. You know, based on what it is and based on
17 what's out there, this is what it is. Okay, we are
18 not going to be able to go to court and argue that
19 we should be able to have under our current policies
20 that a person should be allowed to invite a preacher
21 to come and talk to our graduation ceremonies.

22 Q. Yes, sir, my question is much more limited
23 and I want to see if I can get you out of here. You
24 did make this comment?

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1 A. Yes, I did.

2 Q. With the clarification that you have given?

3 A. Again, incomplete quote.

4 Q. And my question was just did any other
5 Board member make a comment in response to the
6 public comment section of the meeting?

7 A. Unless it's printed in here I'm going to
8 say no. And this, whatever comment I made here, who
9 is the author here, Pat Titus, Patricia Titus, this
10 probably would have been an interview that happened
11 afterwards during the break of some type. This
12 would have been a comment that would have been made
13 during the Board meeting itself.

14 Q. I have two quick questions on the report of
15 the August 24 meeting. On page two of this exhibit
16 in the second column, look at the one, two, three,
17 fourth paragraph halfway down the paragraph here is
18 a sentence that begins, at times?

19 A. Uh-hum.

20 Q. And it reads, "At times the meeting
21 resembled a prayer meeting as much as a School Board
22 meeting with choruses of amen ringing in the
23 audience after speakers declared their believe and
24 their support for prayer in the schools."

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1 A. Right.

2 Q. "Few speakers drew any line between the
3 Board's policy on commencement ceremonies or other
4 school events and the policy of prayer said before
5 School Board meetings."

6 A. Right.

7 Q. I want to ask you, would you agree that at
8 times the meeting resembled prayer meeting?

9 A. I don't know that I'd call it a prayer
10 meeting but I would say as I stated to you earlier I
11 don't think a lot of people really understood what
12 the issues were. Like the last sentence says few
13 speakers drew any lines. I think most of the
14 speakers were not aware what we were discussing was
15 a more limited realm.

16 Q. There were choruses of amen --

17 A. Yes.

18 Q. -- and people?

19 A. Yes.

20 Q. -- cheering for people who expressed
21 support for prayer in schools?

22 A. Yes. Yes I don't know if I would call it a
23 prayer meeting.

24 Q. Revival meeting?

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TAB 10

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually 5 As parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. Civil Action 11 No. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 15 DEPOSITION OF REGINALD HELMS, taken 16 pursuant to notice at the Indian River School 17 District, 31 Hosier Street, Selbyville, Delaware, 18 beginning at 3:32 p.m. on October 11, 2006 before 19 David A. Sroka, Registered Professional Reporter and 20 Notary Public. 21 22 APPEARANCES: 23 THOMAS ALLINGHAM, ESQUIRE 24 RICHARD HORVATH, ESQUIRE BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>JASON P. GOSSELIN, ESQ. JARROD D. SHAW, ESQ. Drinker Biddle & Reath LLP One Logan Square Philadelphia, Pennsylvania 19103-6996 For the Defendants</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Reggie Helms. This 3 deposition is being taken on behalf of the 4 Plaintiff in the matter of Dobrich, et al. 5 versus Indian River School Board, et al, 6 case number 15-120. The deposition is 7 being held at 31 Hosier Boulevard, 8 Selbyville, Delaware. We are going on the 9 record on October 11, 2006 at approximately 10 3:32 p.m. 11 The court reporter is David Sroka 12 with Wilcox & Fetzer, Wilmington, Delaware. 13 my name is Lindsay duPhily and I am the 14 videotape specialist with Discovery Video 15 Services. 16 Counsel will now introduce 17 themselves and then the court reporter will 18 swear in the witness. 19 MR. ALLINGHAM: I'm Tom Allingham 20 for the Plaintiffs and with me are Richard 21 Horvath and Brian Lenhard. 22 MR. GOSSELIN: Jason Gosselin for 23 Indian River School District and the Indian 24 River School Board and the individual board</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>member in attendance. REGINALD HELMS, The Witness herein, called for examination by the Plaintiff, having been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows: EXAMINATION BY MR. ALLINGHAM: Q. I've put before you the top document is Plaintiff's Exhibit 30. Would you turn to the last page of that exhibit, please? In the second column from the right -- I should give you some background. This is an article from Delaware Beach Life, have you ever read it before? A. No. Q. There is a picture of you on the front page, is that correct? A. That's me. Q. Not the best picture of all time? A. Well -- Q. In the second column from the right there is a quotation from the Reverend Jerry Fike, do you know who Mr. Fike is? A. Yes.</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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1 Q. Do you understand that the Rutherford
2 Institute contributed to that process?
3 A. All I can testify is that I sent this to
4 Mr. Walls and as you can see it may have been, I
5 don't know specifically that he did.
6 Q. Well, if you look at the page of the
7 Rutherford Institute and Neuberger memorandum that I
8 was looking at earlier, at the bottom it has one,
9 two and three and on the next page it has four and
10 five?
11 A. Right.
12 Q. You can recognize without comparing it word
13 by word that it's virtually verbatim to the final
14 policy as adopted?
15 A. That's why I'm saying you can see, but do I
16 have knowledge that that's what they based it on,
17 nobody told me that but as you can see.
18 Q. Did the memorandum of the Rutherford
19 Institute and the Neuberger Firm, which constitutes
20 PX34, form part of the consideration that you took
21 into account in voting to adopt Board Policy BDA.1
22 the School Board Prayer Policy?
23 A. Yes.
24 Q. Did any other Board member tell you that it

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1 formed an important part of their consideration of
2 the consideration that they took into account in
3 voting for adoption of the Board Prayer Policy?
4 A. No, they didn't, they didn't say that.
5 Q. Look at Exhibit 9, please?
6 A. Okay.
7 Q. And I'm going to ask you Mr. Helms just to
8 take a minutes to read through the policy?
9 A. Sure.
10 Q. Ready?
11 A. Yes.
12 Q. What in your mind was the purpose of
13 offering -- is the purpose of opening the Board's
14 meetings with a prayer or a moment of silence?
15 A. Exactly what it says.
16 Q. To solemnify the proceedings?
17 A. Yes. To me the work that we do is very
18 important. We have the best interests of our
19 students, our staff, and our district and I think
20 any time you enter into important work, if you will,
21 of this nature, that in my way of thinking you
22 should invoke the wisdom and guidance of a higher
23 power, if you will, whatever you see that to be.
24 But I think that this simply says that we

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1 are asking for wisdom and guidance to make good
2 sound decisions.
3 Q. And the means of solemnifying the
4 proceedings specified in the Board policy are two,
5 is that correct? One is to offer a prayer and the
6 other is to offer a moment of silence?
7 A. As I see there are two mentioned, prayer
8 and moment of silence.
9 Q. And am I correct that the Board policy
10 authorizes Board members to open the meeting at the
11 invitation of the Board president and on a rotating
12 basis that's specified here, with the limitations
13 that are specified, in one of two ways and only one
14 of two ways, a prayer or a moment of silence?
15 A. Well, I'll speak to that issue like this.
16 Your definition of a prayer and my definition of a
17 prayer may be two separate things. Therefore, I
18 know that there are some Board members who have
19 opened the meeting with something that they received
20 from the Internet which may be from George
21 Washington or Thomas Jefferson or whatever. There
22 have been some Board members that pray simply as
23 they are led.
24 In other words, there is nothing written,

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1 it's just something that they do. We've had Board
2 members that have requested a moment of silence.
3 Although there are only two mentioned here I think
4 the leeway is that whatever you feel as an
5 individual that you want to do, then that's what
6 we've been doing.
7 So, although the policy mentions prayer and
8 a moment of silence, there have been other occasions
9 where people have read something from the Internet
10 and simply that is to just like it says here, it's a
11 very important job that we have, we have over 7000
12 students, and staff and whatever. It's a
13 responsibility that I don't take lightly, and for
14 myself I would love to have someone giving me wisdom
15 and guidance and in my case it's my Heavenly Father.
16 Well, in your case it may be something
17 different and some other Board member it maybe a
18 different way. However, that is the intent as I see
19 it. My feeling.
20 Q. Let me ask you a question about whether --
21 I'm going to give you a hypothetical practice and
22 ask you whether in your judgment it would accord
23 with the policy. I'd like you to imagine a
24 hypothetical Board member who is an atheist. A very

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1 can seek divine guidance for your work as a Board
2 member is by saying a prayer out loud on the stage
3 in the name of Jesus Christ at the Board meeting?

4 A. No, that is not the only way.

5 Q. You could pray for divine guidance off
6 stage in what I guess would be the wings of the
7 stage right before you walk on?

8 A. Well, as I said before you can pray
9 anywhere.

10 Q. Or after you walk on you could offer a
11 silent prayer in your head for divine guidance?

12 A. Sure.

13 Q. You could invite those present with you to
14 join you in a moment of silence as a way of seeking
15 divine guidance, is that correct or not correct?

16 A. Yes, you could do that.

17 Q. And those methods of seeking divine
18 guidance are no more or less effective in your
19 understanding of one's relationship with God, no
20 more or less effective than a public prayer out loud
21 would be?

22 A. As I stated before I think God hears your
23 prayers whether it's openly or privately. And the
24 only thing I would say is that could you do it in

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1 the wings, yes, could you do it silently, yes, but
2 as far as I know we're still allowed to do it
3 openly, so if I were to choose to do it openly I
4 hope I would continue to have the right to do so.

5 But God would hear my prayer whether it was
6 silent, whether it was openly, whether it was in my
7 vehicle, or whether I was on stage. God would hear
8 my prayer.

9 Now, how effective the prayer is only He
10 can determine that, but I believe He hears my prayer
11 and answers according to His will, but I think
12 that's why we are here. I'm certainly very hopeful
13 that there doesn't come a time where someone says to
14 me you cannot pray openly. I hope that never
15 happens in this United States.

16 Q. Everyone's memory is not perfect, but would
17 you think it's fair to say that for every single
18 Board meeting that you've attended as a Board member
19 you have asked for God's help in performing your
20 duties at that meeting?

21 A. I would say almost every one, sure. I
22 don't know if it would be -- like I told you
23 yesterday I don't use words like never and all, but
24 I would say that it's safe to say that yes for the

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1 most part.

2 Q. And that would include regular meetings and
3 special meetings?

4 A. Yes.

5 Q. And so would you describe for me how you
6 have, if you can recall, how you have asked for
7 divine guidance before special meetings of the
8 Board?

9 A. Typically we receive an agenda, and on that
10 agenda will be certain items, and I just simply ask
11 the Lord to help me make good sound decisions that
12 will be for the good of the district and the staff
13 and the students, and ask his blessings on whatever
14 decisions are made. That type of thing.

15 Q. And that -- because we know that public
16 prayers are not offered at special meetings, that
17 would be a private prayer?

18 A. That would be private, although I would say
19 there have been other meetings besides regular
20 meetings that prayer has been open, the meeting has
21 been started with an open prayer. As a matter of
22 fact, there were several negotiation meetings where
23 I was asked by the association on the other side of
24 the table if I would open the meeting with prayer.

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1 So, there have been other meetings besides
2 regular meetings that have been opened with prayer
3 that I have been sitting in on --

4 Q. Yes --

5 A. -- but not every one.

6 Q. Yes, sir. I was following up on your
7 testimony and also that of Mr. Bireley and Dr.
8 Hattier, that it is not the practice of the Board to
9 open special meetings with a prayer, and that's
10 correct, isn't it?

11 A. That's correct, although over the years
12 that I've been on there some have, but it would be
13 out of the ordinary.

14 Q. Yes, sir. And so setting aside the out of
15 the ordinary special meetings where someone offered
16 a public prayer, when you asked for divine guidance
17 you did so privately?

18 A. Yes.

19 Q. Let me ask you this, before any special
20 meeting have you ever gotten together with, just
21 said to one or more of your fellow Board members,
22 you know, before we start let's offer up a prayer
23 for guidance? Not as a formal matter, but inside of
24 purely private prayer have you invited someone to

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TAB 11

Hobbs, Lois 10/24/2006 4:43:00 PM

FOR THE DISTRICT OF DELAWARE
 MONA DOBRICH and MARCO)
 DOBRICH, Individually and)
 as parents and next friend)
 of ALEXANDER DOBRICH,)
 SAMANTHA DOBRICH, JANE DOE) Civil Action
 and JOHN DOE, Individually) Number 15-120 (JJF)
 and as parents and next)
 friend of JORDAN DOE and)
 JAMIE DOE,)

)
 Plaintiffs,)

v.)

)
 INDIAN RIVER SCHOOL)
 DISTRICT, et al.,)

)
 Defendants.)

Videotape deposition of LOIS HOBBS, taken pursuant to notice at 31 Hoosier Street, Selbyville, Delaware, beginning at 9:12 a.m., on October 24, 2006, before Julie H. Parrack, Registered Merit Reporter, Certified Realtime Reporter and Notary Public.

APPEARANCES:

THOMAS ALLINGHAM, ESQUIRE
 BRIAN G. LENHARD, ESQUIRE
 One Rodney Square
 Wilmington, Delaware 19801
 On behalf of Plaintiffs
 WILCOX & FETZER
 1330 King Street - Wilmington, Delaware 19801
 (302) 655-0477
 www.wilfet.com

1

1 defendants.

2 LOIS HOBBS,

3 the deponent herein, having first been duly
 4 sworn on oath, was examined and testified as
 5 follows:

6 BY MR. ALLINGHAM:

7 Q. Mrs. Hobbs, Ms. Hobbs, which do you prefer?

8 A. Miss, Miss Hobbs.

9 Q. Miss Hobbs, sorry. Have you ever been deposed
 10 before?

11 A. Yes.

12 Q. All right, so you know the process. I'm going
 13 to ask you some questions. You are -- unless your
 14 counsel instructs you not to answer, you're obligated
 15 to answer those questions to the best of your ability.
 16 I'm almost world renowned for asking questions that
 17 are sometimes confusing. Please tell me if you find a
 18 question confusing or ambiguous, and I will do my best
 19 to fix it. Don't answer a question that you don't
 20 feel like you understand.

21 A. Okay.

22 Q. You need to answer, although we have a
 23 videographer here, you still need to answer out loud;
 24 that is to say, so that the court reporter can take

3

1 APPEARANCES (CONT'D):
 2 JASON P. GOSSELIN, ESQUIRE
 3 DRINKER, BIDDLE & REATH, LLP
 4 One Logan Square
 5 18th and Cherry Streets
 6 Philadelphia, Pennsylvania 19103-6996
 7 On behalf of Defendants

8 ALSO PRESENT: TIMOTHY KEARNS
 9 LINDSAY DuPHILY, VIDEOGRAPHER

10 THE VIDEOGRAPHER: This is the videotape
 11 deposition of Ms. Lois Hobbs taken by the Plaintiff in
 12 the matter of Dobrich, et al., versus Indian River
 13 School District, et al., Civil Action No. 15-120. The
 14 deposition is being held at 31 Hoosier Street,
 15 Selbyville, Delaware, on October 24th, 2006. We are
 16 going on the record at approximately 9:12 a.m.
 17 The court reporter is Julie Parrack from
 18 the firm of Wilcox & Fetzer, Wilmington, Delaware. My
 19 name is Lindsay DuPhily, and I am the videotape
 20 specialist of Discovery Video Services.
 21 Counsel will now introduce themselves, and
 22 then the court reporter will swear in the witness.
 23 MR. ALLINGHAM: My name is Tom Allingham.
 24 I represent the plaintiffs. Along with me is Brian
 Lenhard and Tim Kearns.
 MR. GOSSELIN: Jason Gosselin for the

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1 down your answer and there's no ambiguity in what you
 2 answer is. Nods and "um-hums" can be misinterpreted.

3 A. All right.

4 Q. I understand that you have a previous
 5 commitment and that you need to stop at 1:00 this
 6 afternoon, correct?

7 A. At 1:30 at the latest.

8 Q. Okay. I think what we'll do then is stop for
 9 lunch at 1:00. You can take care of your obligations
 10 and if we need to resume thereafter, we will.

11 Is there any -- are you suffering from any
 12 condition that would prevent you from giving
 13 comprehensive and truthful answers to my questions
 14 today?

15 A. No.

16 Q. Or taking any medications that might prohibit
 17 you from doing that?

18 A. No, I took a Benadryl, but I don't think that
 19 will prohibit.

20 Q. All right, your full name is what?

21 A. Lois Margaret Hobbs.

22 Q. And what is your address?

23 A. It is 3 Brighton Street, Ocean View, Delaware.

24 Q. Are you currently employed?

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Unsigned

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<p>1 THE WITNESS: I don't know how to do it.</p> <p>2 MR. GOSSELIN: I don't know what the</p> <p>3 question is going to be.</p> <p>4 THE WITNESS: I don't know what the</p> <p>5 question is going to be.</p> <p>6 MR. GOSSELIN: But if it involves</p> <p>7 revealing what took place at that August 23rd meeting</p> <p>8 that we talked about before, the instruction is to not</p> <p>9 answer that question.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. ALLINGHAM:</p> <p>12 Q. And I may have to ask a couple of questions to</p> <p>13 develop the record because of the nature of the</p> <p>14 instruction.</p> <p>15 So my first question is, at any time</p> <p>16 during the Board's consideration of the School Board</p> <p>17 prayer policy, do you recall any Board member saying</p> <p>18 or expressing the view that perhaps the Board should</p> <p>19 consider a moment of silence instead of a prayer?</p> <p>20 A. I think Mr. Isaacs may have said that once.</p> <p>21 Q. And what was the response?</p> <p>22 A. Just that the Board's feeling was they wanted</p> <p>23 to continue the tradition.</p> <p>24 Q. Do you recall during the discussion of the</p> <p style="text-align: center;">197</p>	<p>1 thoughts.</p> <p>2 Q. According to your understanding, Miss Hobbs, is</p> <p>3 the prayer directed only to the individual Board</p> <p>4 members, or is it directed to all of the people in the</p> <p>5 cafeteria or auditorium in which the prayer is being</p> <p>6 offered?</p> <p>7 A. I believe it's the Board members' prayer.</p> <p>8 Q. So it's directed only to the Board members?</p> <p>9 A. I think they sort of clarify it with a</p> <p>10 statement before that says if you don't want to</p> <p>11 participate in the prayer, you may leave the room, or</p> <p>12 whatever that little paragraph says.</p> <p>13 Q. That's the so-called disclaimer?</p> <p>14 A. Yeah, um-hum.</p> <p>15 MR. GOSSELIN: Or "the disclaimer."</p> <p>16 Objection.</p> <p>17 MR. ALLINGHAM: I'm sorry?</p> <p>18 MR. GOSSELIN: Objection to the form.</p> <p>19 MR. ALLINGHAM: It wasn't meant to be</p> <p>20 substantively charged. I thought you'd object if I</p> <p>21 called it the disclaimer.</p> <p>22 BY MR. ALLINGHAM:</p> <p>23 Q. I showed you the actual Board policy, PX 9.</p> <p>24 Would you see if you can get that out again?</p> <p style="text-align: center;">199</p>
<p>1 moment of silence idea one or more Board members</p> <p>2 saying, "I don't want to be told how I can pray," in</p> <p>3 words or substance?</p> <p>4 A. I'm not sure what meeting that would be, but I</p> <p>5 did hear something like that.</p> <p>6 Q. Who said that?</p> <p>7 A. I don't recall who said it.</p> <p>8 Q. What did you understand, if you had an</p> <p>9 understanding, the purpose of the Board policy on</p> <p>10 School Board prayer to be?</p> <p>11 A. That it would be shared, that we wouldn't be</p> <p>12 preaching any one religion to anyone, that it would be</p> <p>13 shared amongst the Board members to say a prayer. If</p> <p>14 they chose a moment of silence, they could choose a</p> <p>15 moment of silence. If they chose a prayer, they could</p> <p>16 choose a prayer. But as a legislative body, it was up</p> <p>17 to that individual who was ever giving the prayer to</p> <p>18 say whatever prayer they wanted.</p> <p>19 And oftentimes I would say to whoever,</p> <p>20 when I heard who was giving the prayer that, you know,</p> <p>21 you know, a teacher died of a brain tumor, a fire of</p> <p>22 the children, so often they would bless that, you</p> <p>23 know, they would say, you're in our thoughts, that</p> <p>24 family, who's ever gone through this tragedy is in our</p> <p style="text-align: center;">198</p>	<p>1 A. Yes.</p> <p>2 Q. Paragraph 1 reads "In order to solemnify its</p> <p>3 proceedings the Board of Education may choose to ope</p> <p>4 its meetings with a prayer or moment of silence, all</p> <p>5 in accord with the freedom of conscience of the</p> <p>6 individual adult Board member."</p> <p>7 Would you agree with me that according to</p> <p>8 the policy, the purpose of the offering of a prayer or</p> <p>9 moment of silence is to solemnify the proceedings?</p> <p>10 A. Yes.</p> <p>11 Q. And what do you understand the solemnification</p> <p>12 of the proceedings to mean? What does that phrase</p> <p>13 mean?</p> <p>14 A. I think they were just trying to bring some</p> <p>15 dignity and, you know, ask for guidance in their</p> <p>16 decision about children.</p> <p>17 Q. Was there any discussion about that at any time</p> <p>18 that you recall?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Was there ever any discussion of the purpose of</p> <p>21 having a prayer to open Board meetings during any of</p> <p>22 the Board's consideration of this Board policy?</p> <p>23 A. I think it's been a tradition they've been</p> <p>24 opening the Board meetings with a prayer.</p> <p style="text-align: center;">200</p>

TAB 12

McCabe, Elaine (Video) 10/17/2006 9:02:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 IN AND FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH and MARCO : Case No. 15-120 4 DOBRICH, Individually and : 5 as parents and next friend : 6 of ALEXANDER DOBRICH, : 7 SAMANTHA DOBRICH, JANE DOE : 8 and JOHN DOE, Individually : 9 and as parents and next : 10 friend of JORDAN DOE and : 11 JAMIE DOE, : 12 Plaintiffs, : 13 v. : 14 INDIAN RIVER SCHOOL : 15 DISTRICT, et al., : 16 Defendants. : 17 Video Deposition of ELAINE MCCABE, taken 18 pursuant to notice, on Tuesday, October 17, 2006 19 at 9:02 a.m. at 31 Hosier Street, Selbyville, 20 Delaware, reported by Lorena J. Hartnett, a Registered 21 Professional Reporter and Notary Public. 22 APPEARANCES : 23 RICHARD HORVATH, ESQUIRE 24 BRIAN G. LENHARD, ESQUIRE Skadden, Arps, Slate, Meagher & Flom One Rodney Square Wilmington, DE 19801 Attorneys for the Plaintiff WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p style="text-align: center;">1</p>	<p>1 2 3 TABLE OF CONTENTS 4 TESTIMONY OF ELAINE MCCABE: 5 Direct Examination by Mr. Horvath 4 6 Certificate of Reporter 112 7 8 9 10 INDEX TO EXHIBITS 11 Plaintiff's Exhibit 57 99 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">3</p>
<p>1 2 APPEARANCES (CONTINUED): 3 JASON P. GOSSELIN, ESQUIRE 4 Drinker, Biddle & Reath, LLP 5 One Logan Square 6 18th and Cherry Streets 7 Philadelphia, PA 19103-6996 8 Attorney for the Defendants 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">2</p>	<p>1 (The videographer read the 2 introduction, and the attorneys introduced 3 themselves.) 4 ELAINE MCCABE, 5 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS 6 DIRECT EXAMINATION ON BEHALF OF THE PLAIN 7 BY MR. HORVATH: 8 Q. Good morning, Ms. McCabe. 9 A. Good morning. 10 Q. Just so I can be clear from the start, is it 11 Ms. or Mrs.? 12 A. Mrs. 13 Q. Mrs. Have you ever been deposed before? 14 A. Once, yes. 15 Q. And what was that, what were you -- What case 16 was that? 17 A. It was the Barkaski case associated with the 18 school district. 19 Q. And what was the nature of that case? 20 A. It was a case that involved missing monies 21 from a booster organization. 22 Q. Okay, did that case proceed to trial? 23 A. No. 24 Q. Did that case involve in any way religion in</p> <p style="text-align: center;">4</p>

McCabe, Elaine (Video) 10/17/2006 9:02:00 AM

1 until today?
 2 A. I frankly didn't know that -- If I knew that
 3 night, I had forgotten, but I really wasn't aware that
 4 we were on tape.
 5 Q. Can we go back to exhibit number nine, the
 6 copy of the policy?
 7 A. Uh-huh.
 8 Q. Is there any -- Which paragraph of this
 9 policy limits what a board member can say as a part of
 10 their prayer?
 11 A. I would say number three.
 12 Q. Okay. And number three reads, "Such
 13 opportunity," which I presume means the prayer, "shall
 14 not be used or exploited to proselytize, advance or
 15 convert anyone, or to derogate or otherwise disparage
 16 any particular faith or belief." Is that correct?
 17 A. Yes.
 18 Q. What does it mean to proselytize?
 19 A. I take that to mean that the prayer said
 20 before board meetings was not meant to try to
 21 influence anyone to a particular faith.
 22 Q. And I presume that you would use the same
 23 definition for the convert anyone?
 24 A. Right, right.

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1 Q. What does the advance, the word advance in
 2 this policy mean?
 3 A. To put one faith before another.
 4 Q. Okay. Have school board prayers identified
 5 any religious figures, any deities, for example?
 6 A. God and Jesus.
 7 Q. Anyone else?
 8 A. I don't believe so, and not always Jesus.
 9 Q. But --
 10 A. Or I would say the Lord, which would be used
 11 sometimes.
 12 Q. But you don't remember hearing any school
 13 board prayer that was directed to Jehovah?
 14 A. No.
 15 Q. Or Buddha?
 16 A. No.
 17 Q. Or Allah?
 18 A. No.
 19 Q. Or I can keep going through all religious
 20 beings aside from God in general, the Lord and Jesus.
 21 A. Right.
 22 Q. I am going to go through a series of prayers.
 23 A. Okay.
 24 Q. And I want to see whether or not you think

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1 those prayers would be permitted under this policy.
 2 A. Okay.
 3 Q. Oh, before I show you these ones, I am going
 4 to read one to you.
 5 A. Okay.
 6 Q. Suppose that a board member gave the
 7 following prayer: "We pray, Lord, that you enlighten
 8 the heathen in our midst and that you inspire them to
 9 come to the knowledge of your wisdom and goodness."
 10 Would that prayer be appropriate under the
 11 policy?
 12 A. I don't know.
 13 Q. Would it violate paragraph three?
 14 A. I am not an expert on prayer. Read it again.
 15 Q. "We pray, Lord, that you enlighten the
 16 heathen in our midst and that you inspire them to come
 17 to knowledge of your wisdom and goodness."
 18 A. I guess I personally probably don't like the
 19 word heathen, but I don't know whether it would be
 20 allowed or not.
 21 Q. Does this prayer proselytize?
 22 A. I have no idea.
 23 Q. You voted for Policy BDA.1?
 24 A. I did.

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1 Q. And, as a board member, you are responsible
 2 for the enforcement of this policy?
 3 A. Yes, yes.
 4 Q. So, speaking as someone who voted for the
 5 policy and was responsible for the enforcement of the
 6 policy, how would you make a determination as to
 7 whether or not that prayer would violate paragraph
 8 three?
 9 A. Well, I guess, frankly, I had never thought
 10 of it in terms of a prayer like you just read, because
 11 that's not generally what the type of prayer that was
 12 said at our meetings.
 13 Generally, it was just a prayer asking for
 14 wisdom to make good decisions for the betterment of
 15 our district and our children, so I am not sure that
 16 it ever came up and I ever thought about it in a
 17 specific term like that.
 18 I mean I am assuming, the way you read it,
 19 that the words could be interpreted to encourage
 20 people who were not religious to become religious, but
 21 I don't know that that's really the case.
 22 Q. So you do not feel that this prayer violates
 23 paragraph three of the policy?
 24 A. I don't really have a problem with it, no.

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